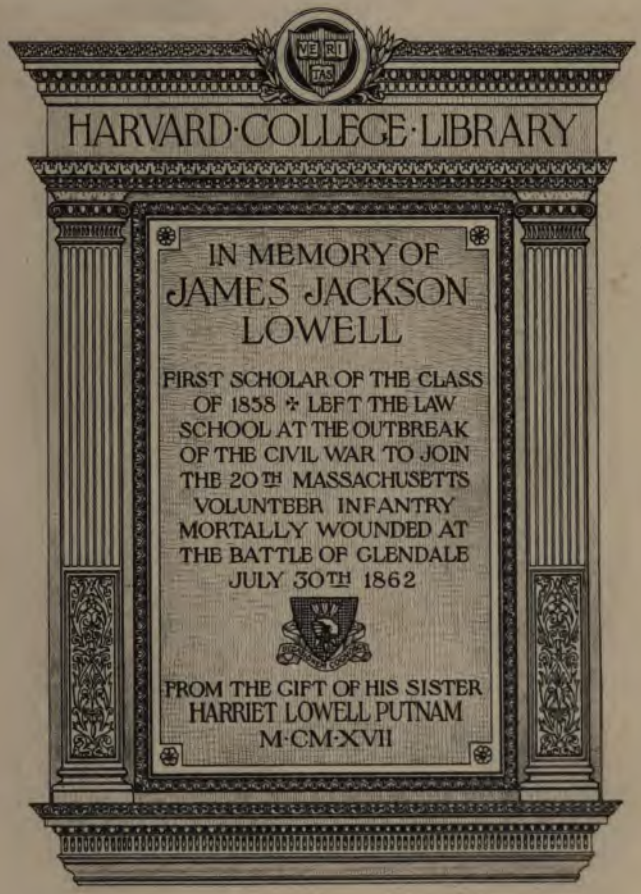
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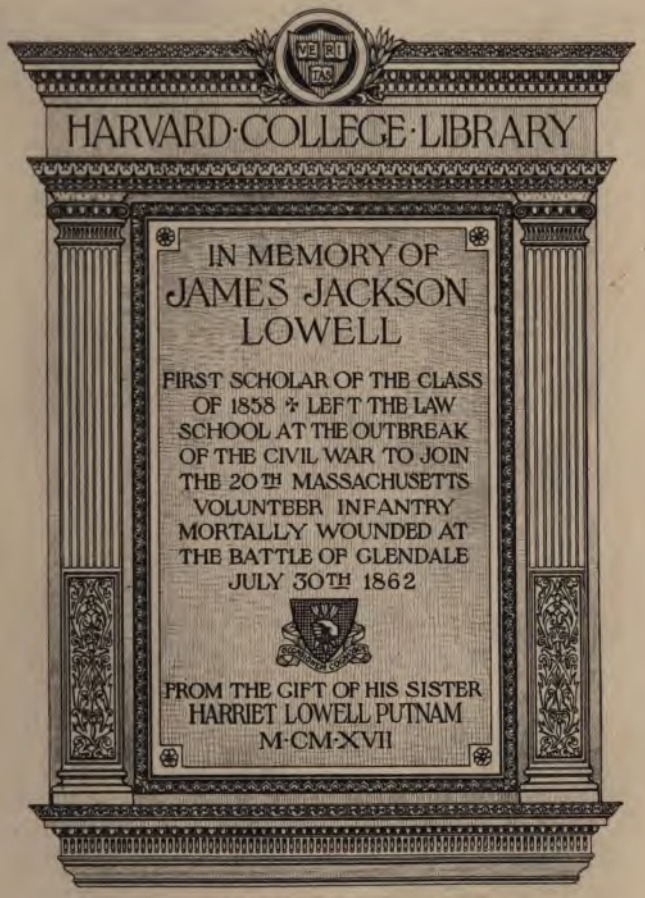
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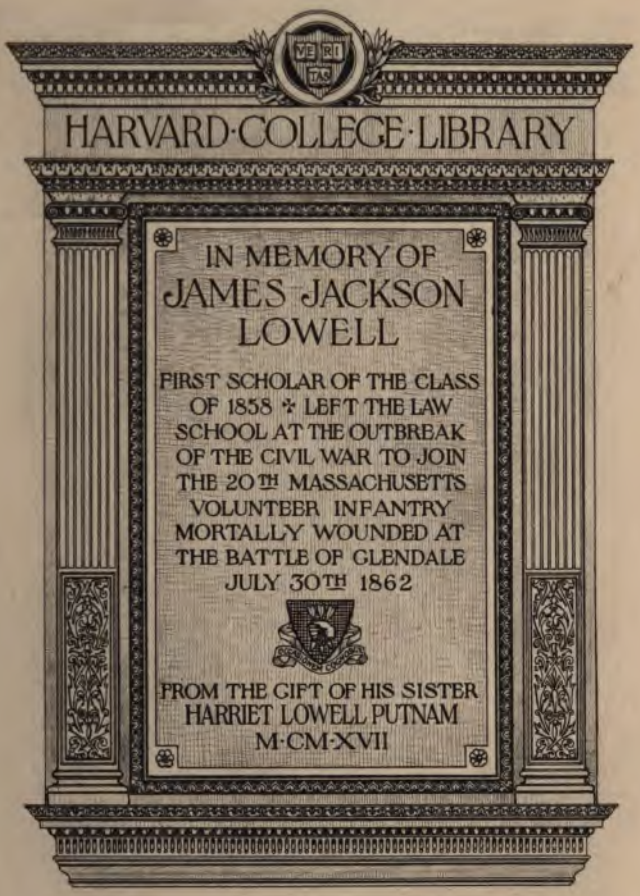
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THE

LAW AND PRACTICE

OF

INTERNATIONAL EXTRADITION

BETWEEN

THE UNITED STATES AND THOSE FOREIGN COUNTRIES WITH WHICH IT HAS TREATIES OF EXTRADITION.

BY

JOHN G. HAWLEY.

CHICAGO:
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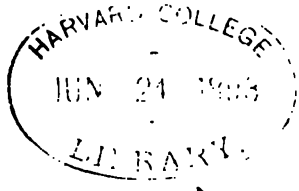
1893.



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TO

MY FRIEND,

JAMES BERESFORD McKAY,

WHOSE STEADFAST FAITH IN THE ULTIMATE VALUE
OF MY LABORS HAS GREATLY STIMULATED
THEIR CONTINUANCE, THIS VOL-
UME IS RESPECTFULLY
DEDICATED.

DETROIT, *October, 1892.*

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INTERNATIONAL EXTRADITION.

International extradition consists in the delivering up by one nation, of a person who has taken refuge in its territories, to another nation for trial and punishment for an offense against the laws of the nation to which the fugitive is surrendered. Extradition of a fugitive from justice, is essentially a national act. Every person who comes into the territory of a nation, immediately comes under its protection and partakes of the inviolability of the soil upon which he stands. He is no longer subject to the law of the country which he has left, nor can he be required to answer to it except by consent of the nation to whose law he has made himself subject by coming within the territory. This is a necessary consequence of the exclusive sovereignty of every nation in its own territories. To avert the evils growing out of affording a safe refuge for dangerous malefactors, a system of reciprocal international extradition has grown up. The advantages are two-fold. The country whose laws have been offended is enabled to vindicate her justice as in the case of a criminal who never passed beyond her borders, and the asylum country is rid of a dangerous and undesirable citizen. To trace the history of extradition and enlarge upon the necessity of it, is foreign to the purpose of this volume. It is enough that its wisdom is now universally recognized in the civilized world. That duty, which was called by the publicists of other days one of "imperfect obligation," is now defined and established by treaties whose obligations are definite and sacred.

Foreign Extradition is purely National in its Character.

Nations in their intercourse with one another, do not recognize any local territorial divisions or deal with any authority except the sovereign or supreme government. All treaties are made and all political foreign intercourse is carried on by the

heads of government in the various countries. This is as true of the United States as of any other country. Therefore, no state can apply to any foreign country for the surrender of a fugitive, nor can it surrender to an alien power, any person found within its limits.

As to international extradition, state boundaries have no existence. All applications for the return of a fugitive must be made by the federal government, which, on the other hand, alone, is authorized to surrender a fugitive to the justice of another country. As the powers of the government of the United States are defined and limited by the constitution, it is to that instrument we must look for the source of its power in the matter of extradition. Foreign extradition is not mentioned in the constitution. The national authority over the subject is found in the second part of Section 2, Art. 2, of the constitution, in which it is provided that "He (the president) shall have power, by and with the advice and consent of the senate, to make treaties." Upon this grant of power to the federal government, the whole fabric of international extradition rests. It is exclusive in its character, and the states are not authorized to make any demand upon a foreign power, nor have they any authority to surrender a fugitive to a foreign power.[1]

Extradition will neither be Granted nor Demanded by the United States, except in accordance with a Treaty.

There is one instance in our national history in which the national government granted extradition, although unauthorized by any treaty.

In 1864, Mr. Seward, then secretary of state, authorized the surrender to the Spanish government of one Arguelles, who, after capturing a cargo of slaves, had sold a portion of them into slavery and pocketed the money. There was no treaty with Spain which authorized the extradition. The act was the occasion of much comment, and the course of the government was generally condemned. Whatever doubts might have been formerly entertained, it must now be regarded as the settled law of

[1] Holmes *v.* Jennison, 14 Pet. 540; *Ex parte* Holmes, 12 Vt. 631; People *v.* Curtis, 50 N. Y. 321; Short *v.* Deacon, 10 Serg. R. 125.

the land that the national government has no authority to grant extradition except in conformity with the provisions of a treaty and the statutes regulating the practice in extradition cases.[1] As the United States cannot extradite except in conformity with a treaty, it is the practice of the government not to request extradition where no treaty is in force.

Some foreign governments are willing, in some cases, to grant extradition although no treaty has been concluded, but they usually ask for a pledge that the government to which the concession is made will reciprocate in a like case. As the federal government is not authorized to give any such assurance, it is now the settled practice to refuse to make any official request for extradition from a country with which no treaty has been negotiated. Nevertheless there are cases in which the officers of the government unofficially lend their assistance and countenance to efforts to bring back to the United States criminals who have fled to countries with which we have no treaty. Every case of that kind stands upon its own circumstances. Charles Angell, who had embezzled a very large amount of money from the Pullman Palace Car Company, was surrendered by Portugal in 1878, in the absence of a treaty, upon the request of the representatives of the United States government.

The Names of the Crimes enumerated in Extradition Treaties, should in each instance of demand be construed in accordance with the law of the demanding Government.

Without an exception, extradition treaties are reciprocal and impose a mutual obligation on the United States and the foreign government with which they are contracted, to surrender persons accused of certain specified crimes. They are, as it were, framed upon the same principles as a cartel for the exchange of prisoners of war. A desire to purge our territories of foreign

[1] Holmes *v.* Jennison, 14 Pet. 540; *Ex parte* Holmes, 12 Vt. 631; People *v.* Curtis, 50 N. Y. 321; Res Publica *v.* Longchamps, 1 Dall. 120; U. S. *v.* Davis, 2 Sumn. 482; *Re* Dos Santos, 2 Brock. 493; Adriance *v.* Lagrave, 59 N. Y. 119; Com. *v.* Hawes, 13 Bush (Ky.) 697; *Re* Metzger, 5 How. 176; U. S. Foreign Relations, Vol. 1, p. 81.

criminals, a consideration much dwelt upon by writers on the law of nations, does not appear to be a controlling consideration. Existing treaties are framed upon commercial principles, and governments surrender persons charged with certain offenses only to those countries which agree to surrender in turn persons found in their territories charged with like offenses.

But in the construction of these treaties controversies arise as to whether in a given case the crime alleged is within the scope of the treaty. Most of the treaties are in two languages, one draft of the treaty being in English, and the other draft in the official language of the foreign country. Each draft is intended to be as nearly as possible a correct translation of the other. In many cases an exact translation is impossible, owing to the difference in the criminal codes of the contracting parties. The difficulty of translation grows out of the fact that the crimes which are described in one language, are not the same, but only similar to, those which are described by corresponding terms in the other language. The criminal law is the most technical part of the law. Every crime has its defined characteristics and limits. These characteristics and limits are not the same in all the countries in which the English common law forms the basis of the penal code; much less can they be expected to be the same in this country and in countries which have a fundamentally different code. The rule of construction of extradition treaties must be a liberal one, if they are to accomplish the purpose for which they were intended; a strict and narrow construction would render them largely inoperative.

In advance of the decisions which may be expected in cases likely to arise under the numerous treaties now in force, it would, perhaps, be unwise to attempt, at this time, to formulate with precision the rules of interpretation which must govern. It would probably not be too much to say, that for every crime for which extradition may be had to the United States, extradition should be granted from the United States for the corresponding crime described by the foreign word in the foreign draft of the treaty, although it may not possess precisely the same characteristics and limits as that described by the English word. The general question has been adverted to by the supreme court of the United States, and a quotation from the

opinion is interesting as showing the tendency of the court, although, in that case, an authoritative expression was not required. The case was one in which it was sought to extradite one Benson to Mexico for the forgery of theater tickets. The court said: "About the only contest made by the counsel for the prisoner is that these are not forgeries, mainly because they are printed matter, and are not in writing, and because neither the name of Mr. Abbey, nor of anybody purporting to be responsible therefor, is found in writing upon them, using the word 'writing' as defendant's counsel does, as meaning script or signatures made by the use of a pen. It is therefore contended that these tickets are not forgeries; but the fraudulent intent with which they were issued, the actual loss and deception to the parties who bought them, and the injury to Mr. Abbey and the others concerned, are not controverted. It is said, however, that this is only a cheat at common law, and it is very strenuously argued that the real meaning of the word 'forgery,' in this treaty, is to be ascertained by the definition of that offense according to the common law of England. The first idea that occurs to the mind in reference to this suggestion, is that the common law of England can hardly be said to be the only criterion by which to construe the language of a treaty between Mexico and the United States. The former government cannot be supposed to have had that common law exclusively in mind as governing the true construction of a treaty concluded between itself and this country, neither of which owes any allegiance to England.

Another circumstance in connection with this matter, is that this court has frequently decided that there were no common law crimes remaining as subjects of punishment at the time this treaty was made. Almost every state in the Union has recast her criminal law by the enactment of statutes in such a mode that the common law is now only appealed to as an aid in the definition of crimes. By the Roman civil law, which perhaps pervades or did pervade the jurisprudence of the larger portion of the civilized nations of the earth at the same time of the making of this treaty, forgery was looked upon as one of the subdivisions of the *crimen falsi* which included forgery, perjury, the alteration of the current coin, dealing with false weights and

measures, etc. 1 Bouv. Law Dict. 441. In support of this view it may be noted that the term corresponding to the word 'forgery' which is used in the Spanish draft of the treaty is '*la falsificacion.*' It certainly does not appear from this that the Mexican authorities intended to be bound in the treaty by any very restricted use of the word 'forgery' when the question concerned an offense of that character committed in Mexico. It is for an offense against Mexican law, that the prisoner is held to answer. As he is not now upon final trial, but the only question is whether he has committed an offense for which, according to this treaty, he should be extradited to that country, and there tried, we do not see that in this application to set the prisoner at large, after he has been committed by an examining court having competent authority, and after having been held in Mexico for the offense charged, that this court is bound to examine with very critical accuracy into the question as to whether or not the act committed by the prisoner is technically a forgery under the common law. Especially is this so when the wickedness of the act, the fraudulent intent with which it was committed and the final success by which the fraud was perpetrated are undoubted."[1]

The general principle involved, which is that the criminal act is to be judged by the laws of the demanding government, is further illustrated by a decision under the treaty with Switzerland. Under the convention with Switzerland extradition is warranted, when one of the specified crimes has been committed, if it is subject to infamous punishment. This provision is construed to mean that the specified crime shall be subject to infamous punishment by the laws of the country where it was committed. It need not also be subject to infamous punishment by the laws of the United States. On the other hand, if the crime were subject to infamous punishment by the laws of the United States and not by the law of Switzerland, it would be extraditable when the demand was made by the United States but not when made by Switzerland. In this instance the language of the treaty receives one construction when the demand is made by one country and another construction when

[1] Benson *v.* McMahon, 8 Sup. Ct. Rep. 1240. Compare *In re* Lagrave, 45 How. N. Y. Pr. 315.

the demand is made by the other.[1] This is a complete answer to the proposition which is sometimes put forward that both texts of the treaty must always mean precisely the same thing.

These cases illustrate the principles involved in the present discussion, that in each instance the right to demand extradition is to be determined rather by the law which has been violated than by the law of the country in which the fugitive is found. The sole purpose of the treaties is, that each of the contracting parties may punish an offender against its own laws. It is of no consequence to the government desirous of vindicating its own law what is the law in another country. Therefore we conclude, that the treaties are to be construed as though, in one of the cases cited, the stipulation were expressed in these words: "Mexico agrees to surrender to the United States, persons who have been guilty of the act which constitutes forgery under the laws of the United States, and the United States agrees to surrender to Mexico persons who have been guilty of the act which constitutes *falsificacion* under the laws of Mexico."

And the same rule should hold where there is but one draft of the treaty, and that in the English language.

There is another view of this matter which should receive consideration. It must be presumed that those who agree to a treaty are fully advised of the meaning of the words which are used. When the government of the United States agrees to surrender for trial in Mexico one who is there charged with the crime of *falsificacion*, it must be presumed to know what acts are included within that word at the time the treaty is concluded. All statutes are construed upon the presumption that the legislature was perfectly familiar with the law upon that subject as it was when the statute was passed. The presumption extends even to foreign law, so that when a statute is adopted from a foreign state, which has been construed in that state, it is presumed that the legislature, having knowledge of the construction, adopted the construction as well as the statute. By analogy, the senate, in agreeing to a treaty having in view the enforcement of a foreign law, must be presumed to know what that law is.

It results from this view that the treaty is based upon the

[1] *Re* Farez, 7 Blatchf. 345, 2 Abb. U. S. 346; 40 How. (N. Y.) Pr. 107.

law as it exists when the treaty is agreed to; and, that if, after the treaty is concluded, the law is extended so as to include in the treaty crimes, acts which were not included when the treaty was negotiated, the treaty cannot be extended so as to include such acts within its provisions.

A Fugitive who has been Surrendered to the United States under an Extradition Treaty cannot be tried for other Offenses than those named in the Warrant of Extradition.

The conflict of opinion which formerly existed upon this subject has been finally set at rest by a decision of the supreme court of the United States. The following note, published by the writer in 1879, is reproduced here for the purpose of showing the state of the law at that time:

"NOTE.—On the 12th day of February, 1876, E. D. Winslow, of Boston, was arrested in London on a telegram from Hamilton Fish, then secretary of state, to await a requisition for forgeries. A police officer immediately sailed for England provided with the necessary papers to secure Winslow's extradition. Before the requisition for his surrender was made, the British minister at Washington suggested to the secretary of state that the demand for Winslow's surrender would probably be refused unless a stipulation was entered into that he should not be tried upon any offense other than that for which he was extradited; whereupon the secretary of state immediately instructed Gen. Schenck, then the American minister in England, to decline to enter into any such stipulation, provided it should be required by the British government. Winslow's extradition was formally demanded and the necessary papers and proofs presented. The British government refused to surrender him unless the United States would give assurances that Winslow should not be tried for any offense not named in the warrant of extradition. A long diplomatic correspondence ensued between the two governments, and neither of them receding from its position, Winslow, after several remands, was discharged from custody on *habeas corpus* on the 17th of June. In a message to congress on the 26th, President Grant announced that the United States considered the extradi-

tion clause of the Ashburton treaty practically abrogated by the action of the British government in Winslow's case, and that thereafter the government would not make or entertain demands for the extradition of criminals, so long as Great Britain should insist upon its position. On the 4th of April of the same year, pending the negotiations in Winslow's case, one Maraine Smith was arrested and committed to jail in Sandwich, Ontario, to await extradition proceedings for a murder in Detroit. On the 11th of April the governor of Michigan requested the secretary of state to take proper steps to secure his extradition, but he declined to make a demand. On the 30th of June a fugitive from justice from Ohio was arrested and committed to jail at Hamilton, Ontario, to await extradition proceedings, but Secretary Fish refused to make any demand for his surrender, as he had already done in the case of Maraine Smith. In the correspondence which will be found reported at large in the report on Foreign Relations, 1876–1877, many cases were cited sustaining the position of the American government. The secretary refers to the case of Heilbronn, who was extradited to Great Britain for forgery, and having been acquitted of that charge, was tried on a charge of larceny and convicted. In the case of Von Earnam (Upper Canada Reports, 4 U. C., p. 288), who had been extradited for forgery, an application having been made for his discharge (before trial) on the ground that the only offense he had committed was false pretenses, the application was refused, the chief justice saying that, 'being in custody, he is liable to be prosecuted for any offense which the facts may support.' In Paxton's case (19 Lower Canada Jurist, 212, 11, 352), to an indictment for uttering forged paper, the respondent pleaded that he had been extradited for forgery. The plea was held bad, and Paxton was tried and convicted, and the conviction was affirmed on appeal. In U. S. *v.* Caldwell (8 Blatchf. C. C. 131), the prisoner having been extradited from Canada on a charge of forgery, was put upon trial for bribing a revenue officer. He pleaded to the jurisdiction, setting up the facts. On demurrer to the plea, the plea was held bad, the court saying that, 'While abuse of extradition proceedings, and want of good faith in reverting to them, doubtless constitute a good cause of complaint between governments, such complaints do not form a proper

subject of investigation in the courts.' The British government having been appealed to to intervene in Caldwell's behalf, replied, May 16, 1871, 'There is nothing in the convention which would preclude the indictment of the petitioner in the United States for any additional offense which is not enumerated in the convention, so long as such proceedings were not substituted for proceedings against him on the charge by reason of which he was surrendered.'

October 27, 1876, the British government receded from the position it had taken in the Winslow case, and the British minister at Washington notified Secretary Fish that fugitives who came within the terms of the treaty would be surrendered without the stipulation which had previously been insisted upon. Since that time the extradition clause of the treaty of 1842 has been carried out as usual. So far, therefore, as this is a political and diplomatic, and not a legal question, it must be regarded as settled in favor of the right to try the fugitive for offenses not named in the warrant of extradition. But a treaty is as much a part of the law of the land as a statute or the constitution, and the judicial branch of the government being co-ordinate with the executive and legislative branches, and all the judicial power being vested in the courts, the courts are not bound by the executive interpretation of the treaty, but must themselves interpret it in all cases properly before them in which its scope and meaning properly come in question.

In Adriance *v.* Lagrave, 59 N. Y. 110, the defendant was arrested on civil process for a wrongful conversion. He moved to vacate the order of arrest, on the ground that he had been brought into New York on a warrant of extradition from France, and that he was arrested on the civil process before he had had an opportunity of returning to France after the proceedings in the matter for which he was extradited had terminated. The defendant also alleged that the extradition proceedings were fraudulent, and that they were taken for the purpose of bringing him within the jurisdiction of the courts of New York, that he might be arrested and detained on civil process. The motion was denied, and on appeal to the court of appeals, it was held to have been properly denied. The court say, 'While we appreciate the justice and fairness in the abstract of the principle

* * * in view of the authorities referred to, and in the absence of any legal principle on which it can rest, we do not feel justified in holding that there is such an implied obligation which can be enforced by the courts, at the instance of the defendant, as will prevent a prosecution for other offenses or civil liabilities.'

This case and the case of U. S. *v.* Caldwell, above cited, are followed and approved in U. S. *v.* Lawrence, 13 Blatchf. 295. In Williams *v.* Bacon, 10 Wend. 636, the defendant moved to set aside a *capias* in a civil case under which he had been arrested and held to bail, on the ground that he had been brought from Massachusetts on an extradition warrant for false pretenses, and that he was privileged from arrest on any other charge until he had an opportunity to return to Massachusetts. The motion was denied, but the court (Nelson, J., delivering the opinion) say, 'There is no pretense that the criminal proceeding in this case was a mere pretext to bring the defendant within the jurisdiction of the court for the purpose of proceeding against him *civiliter*. The argument of the defendant's counsel in this particular is not supported by the facts of the case. Had such fact appeared, the defendant would have been discharged. As it is, the motion is denied, with costs.'

Against these authorities, and in support of the doctrine of Com. *v.* Hawes, can be cited the great authority of Judge Cooley, the author of Cooley's Constitutional Limitations. That learned jurist, in an article published in the Princeton Review of January, 1876, uses the following language: 'To obtain the surrender of a man on one charge and then put him upon trial on another is a gross abuse of the constitutional compact. We believe it to be a violation also of legal principles. It is a general rule, that where, by compulsion of law, a man is brought within the jurisdiction for one purpose, his presence shall not be taken advantage of to subject him to legal demands or legal restraint for another purpose. The legal privileges from arrest when one is in the performance of a legal duty away from his home rest upon this rule, and they are merely the expressions of reasonable exception from unfair advantages. The reason of the rule applies it to these cases: it should be held, as it recently has been in Kentucky (Com. *v.* Hawes), that the fugitive surrendered

to one charge is exempt from prosecution upon any other. He is within the state by compulsion of law upon a single accusation; he has a right to have that disposed of, and then to depart in peace.' "[1]

The law is now settled that a person brought within the jurisdiction to answer to a charge on which he has been extradited under a treaty can only be prosecuted on that charge. When that prosecution has terminated, whether by acquittal, the cause having been dismissed, a neglect to prosecute within a reasonable time, or by serving out a sentence of imprisonment which has been imposed, the person extradited must be allowed a reasonable time in which to return to the state or country from which he was extradited before he can be proceeded against upon any other charge. Should a prosecution be attempted he may set up his immunity by a plea in abatement. Or he may sue out a writ of *habeas corpus*, either in the state or federal courts if he is detained by the state authorities, or in a federal court if he is in the hands of federal officers. If the state courts should refuse to discharge him on his plea in abatement or on *habeas corpus* he may then sue out a *habeas corpus* from a federal court. It is to be remembered, however, that this immunity does not extend to one who does not depart after he has reasonable time or opportunity to do so. If after this he remains, he waives his privilege and is subject to the jurisdiction of the courts in the state where he is found for all purposes. This immunity from prosecution attends him not only in the state to which he is brought but also in all states and territories through which he must pass while returning with reasonable diligence to the state or country from which he is brought.[2]

Reading together the decisions of the supreme court of the United States in *ex parte* Royall and U. S. *v.* Rauscher, it will be seen that any federal judge might and should discharge on *habeas corpus*, a prisoner whom the state courts refused to discharge after he had been discharged from prosecution on the

[1] 2 Am. Cr. Reports, 212.

[2] U. S. *v.* Rauscher, 119 U. S. 407. State *v.* Vanderpool, 39 Ohio St. 273; Blandford *v.* State, 10 Tex. Ct. of App. 627; Com. *v.* Hawes, 13 Bush (Ky.) 697; *Ex parte* Royall, 117 U. S. 251.

charge on which he was extradited. As the federal courts will afford this protection where the state courts refuse it, there is no practical difficulty in securing it.

Although the question cannot be regarded as finally settled until disposed of by the supreme court of the United States,[1] it is believed that an extradited prisoner is also exempt from arrest in civil process. The law was so held by Judge Brown, S. D., New York, in a case wherein he discharged a prisoner on *habeas corpus*. The prisoner had been surrendered by the British government on a charge of forgery. Having been tried and acquitted on that charge he was arrested as he was leaving the court-house, on a civil order of arrest issued out of the supreme court of New York. Writs of *habeas corpus* and *certiorari* were thereupon issued under section 752 of the Revised Statutes of the United States. After discussing the questions involved, in a very thorough and able manner, Judge Brown concluded his opinion by saying:

"I must hold, therefore, upon the principles and authorities approved by the supreme court in the case of Rauscher, that the prisoner, at the time of his arrest, not having a reasonable time to return to Ireland after his acquittal, was under the protection of the United States, and not subject to arrest in the state or federal courts for any cause arising prior to his extradition, and that the state court, when the prisoner was arrested by the sheriff, 'did not have jurisdiction of the prisoner at that time, so as to subject him thereto.' 119 U. S. 433, 7 Sup. Ct. Rep. 248. When persons are in custody under process of the state courts, and the same remedies exist there, although it may sometimes be more appropriate to refer the applicants for relief to the state tribunals (*Ex parte* Royall, 117 U. S. 251, 6 Sup. Ct. Rep. 742; *Ex parte* Coy, 32 Fed. Rep. 911), yet, in a matter involving personal liberty, and considering the several successive appeals to which the petitioner might be subjected in the state courts, I think the prisoner is entitled to the more expeditious remedy of the federal tribunals. The prisoner is accordingly discharged, and the court fixes a week after his release by the sheriff as a reasonable time under the statute.

[1] The supreme court alluded to this subject but waived the expression of any opinion upon it in *Ex parte* Rauscher, 119 U. S. 407.

during which he is entitled to exemption from arrest for the purpose of returning to Ireland."[1]

Extradition Treaties do not Protect One who has been Kidnaped in a Foreign Country and Brought by Force within the Jurisdiction from Prosecution for any Offense whatever.

It is a general principle that courts appointed to try criminals will not enquire into the manner of the arrest or whether the proceedings which brought the prisoner within the power of the court were legal or illegal. The following language used by Miller J., of the United States supreme court, illustrates the general rule. "For mere irregularities in the manner in which he may be brought into the custody of the law, we do not think he is entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment."[2] This doctrine is applied in its fullest extent to cases where the prisoner was kidnaped in a foreign state or country.[3]

Perhaps the case which most strikingly illustrates the principle is that of Plyant Mahon decided in 1888. Mahon had been indicted for murder in Kentucky. He was a resident of West Virginia. The governor of Kentucky made a requisition on the governor of West Virginia for his extradition for trial in Kentucky. This requisition the governor of West Virginia refused to honor. The agent of the state of Kentucky then gathered a body of armed men and kidnaped Mahon and brought him to a Kentucky jail, where he was arrested on a bench warrant. The governor of West Virginia then demanded that Mahon should be returned to West Virginia, but this the governor of Kentucky refused to order. Then a writ of *habeas corpus* was sued out in the federal court of Kentucky, and on this state of facts it was held that no constitutional right of Mahon's had been violated, and that he

[1] *In re* Reinitz, 39 Fed. Rep. 204.

[2] Ker *v.* Illinois, 119 U. S. 436.

[3] State *v.* Brewster, 7 Vt. 118; Dow's case, 18 Pa. 37; State *v.* Ross, 21 Iowa, 467; *Ex parte* Barker, 6 Son. Rep. (Ala.) 7; Ker *v.* People, 110 Ill. 627; *Re* Lagrave, 45 How. Pr.; *Re* Miles, 53 Vt. 609; Ker *v.* Illinois, 119 U. S. 436.

should be held for trial on the indictment.[1] This case follows the decision of the supreme court of the United States in Ker's case. Ker, who was an embezzler, was kidnaped in South America and brought to the United States for trial. He sued out a writ of *habeas corpus*, and it was determined by the supreme court that he was not entitled to relief, but was properly triable in Illinois, where his crime had been committed. The court suggests, with grim humor, that when he regains his liberty he may have an action for false imprisonment against his captors.[2] It is also held that a person cannot claim immunity because he was enticed into the jurisdiction by stratagem and fraud.[3] The fundamental principle on which the doctrine which these cases illustrate rests, is this: The criminal himself never acquires a personal right of asylum or refuge from the consequences of his crime anywhere. The government of the state or country to which he flees may insist that he shall not be extradited from there unless by its consent, and under such conditions as it shall assent to.

But the fugitive cannot assert these rights of the foreign state or government in our courts unless he was surrendered by the foreign state. He has no personal right to an asylum, and the trial court before which he is brought will not inquire in what manner the officers who bring him before the court obtain possession of his body. It is enough that he is there, in the power of the court, and charged with a crime for which he is to be tried. This is the rule in all cases except where a prisoner has been extradited by virtue of a treaty, or under the constitution and laws of the United States. In such cases the demanding government owes a duty, not to the prisoner himself, but to the government which surrendered him, not to violate the compact or the law under which he was surrendered. And this compact or law, it is settled, the courts will give effect to at the instance of the prisoner himself.

[1] *In re* Mahon, 34 Fed. Rep. 535. The contrary doctrine has been maintained in Kansas: State *v.* Simmons, 39 Kan. 282.

[2] Ker *v.* Illinois, 119 U. S. 436.

[3] *Re* Brown, 28 Fed. Rep. 653.

Under Most of the Treaties a Citizen will not be Surrendered.

Most of the treaties for extradition contain a clause which excuses the government upon which the demand is made from extraditing a citizen or subject. It is not a provision which commends itself when the purposes of extradition are considered. It must be regarded as a sop to prejudice and exaggerated national feeling. The only important legal question which can arise under this provision is, whether or not the question of citizenship is one to be inquired into by the commissioner. As citizenship is a question of mixed law and fact, the commissioner should hear and pass upon any evidence offered upon this point, if the question is raised before him. His decision upon this, as upon the other questions in the case before him, if he should decide to commit the prisoner for extradition, is subject to revision by the department of state. But the evidence upon which the matter must finally be determined, can be much better taken before the examining magistrate than elsewhere. The only reason for any doubt upon this question is found in that principle of law, that political questions arising under treaties are to be determined by the executive and not by the judicial branch of our government,[1] and in some cases it might be considered a political question whether a certain individual was entitled to claim citizenship or not. But so far as the question involved here is concerned, the distinction between political questions and those which are to be adjudicated by the judicial power is clear. Whether a certain class of persons is entitled to certain rights under a treaty, is a political question, to be determined by the executive; whether an individual belongs to the class is a question to be determined, in the first place, by a judicial magistrate, in the quasi-judicial proceedings prescribed by the statute.

Our extradition treaties also provide that no person shall be surrendered for trial for political offenses. The same reasons which require the examining officer to hear and pass upon evidence as to citizenship demand that he shall enquire into the fact whether a man's extradition is sought in order that he may

[1] Foster *v.* Neilson, 2 Pet. 253.

be punished for a political offense when this is alleged.[1] In view of the precedents it must be stated that every act is a political act which has a political purpose in view even though the act is in itself and apart from its political purpose a detestable crime. It is gratifying to say that our government has shown its willingness to limit the effect of this principle by consenting, in the treaties with Belgium and Luxemburg, to stipulations that murder and assassination of the heads of government or any member of their families shall not be construed to be political offenses.

Extradition Treaties are Retroactive in their operation unless they contain a stipulation to the contrary.

Many of the extradition treaties contain a stipulation that they shall not apply to crimes committed before they go into effect. In the absence of such a provision, it is believed that the law was correctly stated by Judge Blatchford. He said:

"The expression, 'persons convicted of, or charged with, the crimes hereinafter specified, and being fugitives from justice,' and the expression, 'persons who, having been convicted of, or charged with, the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other', and the expression, 'persons * * * * who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes,' are expressions which are as properly used to include crimes already committed as crimes to be afterwards committed. That the convention applies to future crimes, even if it does not apply to past crimes, and that the expressions just quoted apply to future crimes, even if they do not apply to past crimes, are propositions not disputed and not to be disputed. In other words, it is not, and could not, be contended, that the convention applies only to crimes committed before the making of the convention. The preamble to the convention says, that it is made 'with a view to

[1] The British extradition act specially provides that the examining magistrate shall hear all evidence that shall be offered to show that the extradition of the fugitive is sought in order that he may be punished for a political offense.

the better administration of justice, and to the prevention of crimes' within the 'respective territories and jurisdiction' of the two governments. Justice may be better administered, and crime may be prevented, as consequent upon extraditing a person for a crime committed before the making of the treaty, quite as much as consequent upon extraditing a person for a crime committed after the making of the treaty. The expression, 'a person charged with murder and being a fugitive from justice,' does not require that the person shall commit the murder in the future. If he has committed the murder and fled from justice before the making of the treaty, and is, after the making of the treaty, charged with the crime, he answers the description of 'a person charged with murder and being a fugitive from justice.' The expression, 'a person who, having been charged with murder, committed in Italy, shall seek an asylum, or be found, within the United States,' does not require that the person shall commit the murder in the future. If he has committed the murder in Italy before the making of the treaty, and is, after the making of the treaty, charged with the crime, and found within the United States, he answers the description of 'a person who, having been charged with murder, committed in Italy, shall be found within the United States.' And, even though he fled from justice before the making of the treaty, and, before the making of the treaty, came into the United States with a view of obtaining an asylum there, and remained there permanently, after coming there, until found there after the making of the treaty, he was at all times a fugitive from justice, after he first fled, and continued to be such down to the time of his being found within the United States, and is such when so found, and he was at all times the seeker of an asylum within the United States, after his first arrival there, down to the time of his being found there, and is such when so found. He does not seek such asylum only at the moment when he first reaches our shores. The word 'asylum' includes not only place, but, also, shelter, security, protection; and a fugitive seeks such asylum at all times when he claims the use of the territories of the United States as an asylum. The expression, 'a person shall be delivered up, who shall be charged with murder,' and the expression, 'a person shall be delivered up, who shall have been charged with murder,' do not require that

the person shall commit the murder in the future. If he has committed the murder in Italy before the making of the treaty, and is, after the making of the treaty, charged with the crime, he answers the description of 'a person who shall be charged with murder,' and the description of 'a person who shall have been charged with murder.'

Another mode of stating the question leads to the same result. If the contracting parties had been advised, when making the treaty, that this particular murder had been committed by the prisoner, and that he had fled to the United States, but had neither been convicted of the crime nor formally charged with it, and had designed to use language, in the treaty, which would provide for the extradition of the prisoner, when he should be formally charged with the crime, and his surrender be asked for, they could not have used language more aptly chosen to carry out such design, than that which is used in the treaty, the same language being intended to cover also future crimes. Hence, in the preamble, they say they design to deliver up persons convicted of or charged with murder, which includes persons thereafter to be convicted and persons thereafter to be formally charged, but covers crimes committed before the making of the treaty. Then, in the first article, they agree to deliver up persons who having been convicted of or charged with murder, committed within the jurisdiction of one government, shall be found within the territories of the other, which includes persons thereafter to be convicted and thereafter to be formally charged, but covers crimes committed before the making of the treaty. Then, in the second article, they contract that persons shall be delivered up, who shall have been convicted of or be charged with murder, which includes persons thereafter to be convicted and thereafter to be formally charged, but covers crimes committed before the making of the treaty.

The foregoing considerations lead to the conclusion, that there is nothing in this convention which excludes extradition for crimes previously committed, and nothing inconsistent with a a construction of the convention, that such crimes are included within the convention, and were intended to be so included. But the correctness of this conclusion becomes more apparent, when, on a comparison of this convention with other extradition

treaties made by the United States, it is seen that there are some of such treaties made before and some since the convention in question, which takes pains, in their language, to exclude prior crimes, while this convention contains no such exclusion. As has already been seen, there is, in this convention, a limitation article, the third, which declares what the provisions of the treaty shall not apply to. It enumerates political offenses, and then provides that a person surrendered shall not be tried for any ordinary crime committed prior to that for which his surrender is asked. A limitation article as to offenses first makes its appearance in the treaty with France, of November 9th, 1843. (8 U. S. Stat. at Large, 582.) Article 5 of that treaty provides, that its provisions shall not be applied to any crimes committed anterior to its date, nor to any political offense. In the treaty with the Swiss Confederation, of November 25th, 1850 (11 *Id.* 594), article 17 provides, that the treaty shall not apply to offenses committed before its date, nor to those of a political character. In the treaty with the Two Sicilies, of October 1st, 1855 (11 *Id.* 653), article 24 contains like provisions. In the treaty with Austria, of July 3d, 1856 (11 *Id.* 692), article 1 contains like provisions. In the treaty with Baden, of January 30th, 1857 (11 *Id.* 715), the limitation as to offenses (article 1) only excludes those of a political character, and does not exclude offenses committed before the date of the treaty. In the treaty with Sweden and Norway, of March 21st, 1860 (12 *Id.* 1126), the exclusion (article 5) is only of political offenses. In the treaty with Venezuela, of August 27th, 1860 (12 *Id.* 1160), the limitation article (article 30) returns to the practice of excluding offenses committed before the date of the treaty, as well as political offenses. In the treaty with Mexico, of December 11th, 1861 (12 *Id.* 1202), the limitation article (article 6) excludes political offenses, and the return of fugitive slaves, and crimes committed by slaves, and crimes committed anterior to the date of the exchange of the ratifications of the treaty, which date was more than five months after the date of the treaty. In the treaty with Hayti, of November 3d, 1864 (13 *Id.* 728), the exclusion (article 41) is of offenses committed before the date of the treaty, and of those of a political character. In the treaty with the Dominican Republic, of February 8th, 1867 (15 *Id.* 489), the exclusion (article 30),

is in like terms. Next in order of time follows the treaty now in question, with Italy. After excluding, in three treaties made in 1850, 1855 and 1856, offenses committed before the date of the treaty, two treaties were made, in 1857 and 1860, which did not exclude such offenses, and then four treaties were made, in 1860, 1861, 1864 and 1867, excluding such offenses, and then this treaty with Italy was made, in 1868, not excluding such offenses. Here is evidence of intention and design in excluding past crimes from some treaties and not excluding them from others, showing that the understanding was that past crimes would be included, where the language was capable of a construction including them, unless they were expressly excluded. In all the treaties which do not expressly exclude them, the language is as apt and proper to include them as in this treaty with Italy. Passing now to treaties subsequent to that with Italy, the limitation article (article 3) of the treaty with Nicaragua, of June 25th, 1870 (17 *Id.*, 817), is precisely like that of the treaty with Italy. So, also, is the limitation article (article 3) of the treaty with Salvador, of May 23d, 1870, (18 *Id.*, Treaties 11). But, the like article (article 3) in the treaty with Peru, of September 12th, 1870, (18 *Id.*, Treaties 37), excludes offenses of a political character, and crimes committed anterior to the date of the exchange of the ratifications of the treaty. So, also, the like article (article 12) in the treaty with the Orange Free State, of December 22d, 1871, (18 *Id.*, Treaties 67), excludes offenses committed before the date of the treaty and political offenses. But the like article (article 3) in the treaty with Ecuador, of June 28th, 1872, (18 *Id.*, Treaties 74), excludes only political offenses. We then come to the latest published extradition treaty made by the United States, that with Belgium, made March 19th, 1874, (18 *Id.*, Treaties, 120). It is substantially identical with the treaty with Italy, and drafted on the same model, except in the following particular. The third article of it is in these words: 'The provisions of this treaty shall not apply to any crime or offense of a political character, nor to any crime or offense committed prior to the date of this treaty, except the crimes of murder and arson; and the person or persons delivered up for the crimes enumerated in the preceding article, shall in no case be tried for any crime committed previously to that for

which his or their surrender is asked.' There is, in this article, a clear indication that the contracting parties understood that crimes committed prior to the making of the treaty would be within its terms, unless they should be expressly excluded by it from its operation; that, having in view and in mind crimes which might have been committed before the date of the treaty, they proceeded to declare that they should be excepted from the operation of the treaty; and that then, having in view and in mind the crimes of murder and arson which might have been committed before the date of the treaty, they proceeded to declare that those two crimes, committed before the date of the treaty, should not be excepted from its operation, by virtue of the general clause excepting crimes committed prior to the date of the treaty. The language of this 3d article of the treaty with Belgium, in connection with the language of the prior treaties, is evidence of the fact, that, in all of the treaties, the language being such as to admit of the including of prior crimes, the general rule is understood by the contracting parties to be, that prior crimes are included, and that where they are not included, it is because they are expressly excepted in the treaty."[1]

When the treaty makes no provision upon the subject it goes into effect from the date of its conclusion.[2]

The United States will not grant Extradition for Extra-Territorial Crimes, nor Recognize a Conviction obtained in the Absence of the Accused.

Some foreign countries provide by law for the trial and punishment by their laws of persons, who owe allegiance to them, for crimes committed in another jurisdiction. Other foreign laws provide for the trial of persons who being accused of a crime committed within their jurisdiction are not found there and are not present at the trial. Our laws do not recognize extra-territorial jurisdiction[3] and do not admit the validity of a

[1] *Re* Giacomo, 12 Blatchf. 391.

[2] *Re* Metzger, 5 How. 176.

[3] But a ship on the high seas is considered a part of the territory of the nation to which she belongs: *Re* Sheazle, 1 Woodb. & Minot, 66; *Re* Bennett, 11 Law Times Rep. 488.

judgment which was pronounced in the absence of the accused. These doctrines rest upon two principles which are embedded in, and are fundamental to, our criminal law. The first, that an accused person shall be tried where the crime was committed and where the evidence, which is to determine his guilt, is easily accessible. The other is that no man shall be finally condemned so long as there is a possibility that he may be able to advance some reason against his condemnation. This is illustrated by the rule that in a case of felony a judgment is void unless the record shows that the prisoner was asked if he had anything to say why the court should not pronounce judgment before the sentence is pronounced. The essential fairness of these principles is not to be questioned, and it is to the credit of the American government that it has always adhered to them. It refused to surrender Vogt (Stupp) a Prussian subject whose extradition was demanded by Prussia for a crime committed in Belgium upon the ground that Prussian laws provided for his trial and punishment in Prussia because he was a Prussian subject.[1] And in the case of Plugge whose extradition was demanded by Holland in 1889, as one who, in his absence, had already been tried and convicted, the United States refused to surrender him as a convict but only for the purposes of trial, and this condition being accepted, he was extradited for trial and on his trial was acquitted.

It is hardly necessary to say that the principle, that a person will not be surrendered, who is held for trial, or who is convicted of a crime, in the jurisdiction in which he is found until he has satisfied the demands of justice against him there, obtains in international extradition. While it is true that the demands of public justice are superior to private interests, and an officer armed with a criminal warrant has a right to take a prisoner from an officer who has him under civil process,[2] yet the law makes no distinction between the demands of public justice. When a man is arrested or held to answer for a crime, there is no power which can withdraw him from that prosecution until in some manner it has been determined.[3]

[1] *Re* Stupp, 11 Blatchf. 124.

[2] *Ex parte* Rosenblat, 51 Cal. 285. See *contra*, *Re* Briscoe, 51 How. Pr. 422; *Re* Troutman, 25 Zab. 634.

[3] State v. Allen, 2 Humph. 258; Taylor v. Taintor, 16 Wall. 366.

An Extradited Fugitive may Waive his Privilege not to be Tried for any but the Extradition Crime.

Among the questions which have been raised, but are not yet judicially determined, is the question whether the extradited fugitive may waive his right not to be tried upon any other charge than that or those specified in the warrant of extradition. It would be difficult to understand how any doubt could be entertained with regard to this, if we did not know that, hitherto, international extradition has been more a field for speculative theorists, than for lawyers and judges, whose work had made them familiar with the principles of law which universally obtain in the practical administration of justice. It will be sufficient to state these principles familiar to lawyers to dispose of this question. A denial of the right of a given tribunal to try and determine a certain question is usually presented by what is known under our system of practice as a plea to the jurisdiction. This must be based upon one of two grounds. Either it must be claimed that the tribunal is not the one which the law has appointed to try the question involved, or, as it is commonly phrased in our legal vernacular, has no jurisdiction over the subject matter, or, it must be asserted that the court has not lawfully obtained jurisdiction of the person of the defendant for this purpose. In the former case there can be no waiver of jurisdiction, for the consent of an individual cannot confer upon a judge or a court, a right to exercise functions which belong to another tribunal or another officer. Parties cannot choose their forum nor resort to others than those which the law has appointed. No officer of the law could justify himself in enforcing the judgment of a magistrate in a case in which the magistrate has no authority to act. The proceedings of one who has no authority will not prevent the consideration of the matter by the tribunal which the law has appointed. For such reasons, it is said that there can be no waiver of jurisdiction where the court has no jurisdiction of the subject matter. But where the court has jurisdiction of the subject matter, or in other words, when it is the tribunal which the law has appointed to determine the matter, the right to object that the court has not lawfully obtained jurisdiction over the defendant, is a purely personal one. If the defendant ob-

jects that he has not been brought before the court in the manner which the law requires, the court will hear him, and if it finds his contention well grounded, will dismiss him without proceeding further at that time. But this immunity from defending, unless brought into court after the manner prescribed by law, the defendant may always waive. He may say in effect, I wish this case to be now tried and have this accusation disposed of. I am now ready to meet my accuser and to have a judgment pronounced that will forever set this matter at rest. To deny him this privilege would be an infringement of his rights, an assault upon his liberty, a denial of the right of a freeman to decide questions personal to himself for himself. To refuse him the right to waive his exemption in extradition cases, would be to relegate him to the position of a serf or chattel of the government which surrendered him. He would come in chains and go back a bondman. There can be no doubt as to the right of the person extradited to waive his exemption. As we have seen, he would waive it by remaining in the jurisdiction after he had a reasonable time in which to return home.[1]

A practical question involved is whether he shall be deemed to have waived his exemption by not claiming it at the earliest practicable moment, and before pleading to the merits. In the case of residents this is the rule, but in the case of extradited persons, who cannot be presumed to be familiar with our law and practice, it ought not to be. From them nothing less than an express waiver, after being informed of their rights, should be accepted, and it should be held as it was in the case of Coy, that a prisoner does not waive his exemption by pleading to the merits.[2] It may be noted that in this case the judge was of the opinion that the prisoner could not waive his exemption, but under the facts in that case this was *dictum* and it is not based upon sound principles.

Extradition will not be Awarded in the United States except in a Clear Case.

The extradition of an alleged fugitive from justice to a foreign country is, by our laws, a proceeding in which the rights of

[1] Ante, p.12.

[2] *Ex parte* Coy, 32 Fed. Rep. 911.

the prisoner are very carefully guarded. He must first have a hearing before a commissioner or other judicial officer. In this proceeding, he is entitled to the benefit of counsel, to the right of cross examination and to introduce evidence in his own behalf. If, at the conclusion of this examination, the commissioner is not satisfied that the evidence would justify the putting the prisoner upon trial, he must be discharged. If the commissioner discharges him, the general government has no power to extradite him. The commissioner sits as an examining magistrate and is governed by the same rules that control examining magistrates in determining whether or not they will hold an accused person to await the action of the grand jury.

But if the decision of the commissioner is adverse to the accused, his decision is not final. He must, if he finds sufficient ground for extraditing the prisoner, certify to the department of state at Washington, not only his conclusion, but also all the proceedings and the evidence upon which he acted. There the case is again examined, and if the evidence is found unsatisfactory, extradition will be refused. In this respect, the executive branch of the government performs the office of a grand jury, in preventing a man being put to the hazard, ignominy, and the hardship of a final trial without adequate cause. It thus requires the concurrence of both the judicial and the executive departments of our government before a man can be extradited to a foreign country.

Technical Objections Cannot be Relied Upon as a Final or Conclusive Bar to Extradition.

But as the conclusion of the commissioner in finding sufficient cause for extradition is not final, neither does his discharge of the prisoner nor the refusal of the executive to grant extradition, absolutely prevent fresh proceedings. One examination is no bar to another. In the administration of justice it often happens that a preliminary examination fails on account of some remediable defect. The testimony first presented is insufficient; the officer is found not to have jurisdiction; the complaint is technically defective or there is some other curable defect on account of which the proceeding fails. In extradition cases, as in other

cases of preliminary examination, there may be, for sufficient reasons, a second examination upon the same charge. But it would be manifest folly and a violation at least of the spirit of the law, for a commissioner to hold a man for a second time for extradition, upon evidence which had once been rejected by the executive as insufficient.[1]

We now proceed to an examination in detail of the various steps involved in the extradition of an alleged criminal from the the United States to a foreign country.

Section 5270 of the Revised Statutes of the United States provides as follows: "Whenever there is a treaty or convention for extradition between the government of the United States and any foreign government, any justice of the supreme court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, or judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within the limits of any state, district, or territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge, under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the secretary of state, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention, and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made."

[1] *Re* Kelley, 26 Fed. Rep. 852.

In Proceedings for Extradition from the United States, the first step is to make a Complaint before an Extradition Commissioner or other Proper Officer.

The courts were formerly at variance upon the question whether or not it was necessary to present a requisition to the government at Washington, and obtain an authorization, or as it was called, a preliminary mandate, before making complaint to an extradition commissioner or other magistrate.[1] It is unnecessary here to recapitulate the discussion, or to consider at large the reasons given on either side of the controversy. The law must now be regarded as settled, that no application need be made to the general government before making a complaint under the statute. The statute does not require it, and the matter is clearly one which congress has power to regulate.[2] It is now the practice of the department of state to refuse to issue a preliminary mandate, upon the ground that such a proceeding is wholly unnecesssary. A full statement of the position of the department of state will be found in the correspondence between Secretary Bayard and John R. Parkhurst, United States minister at Brussels, and between Secretary Bayard and the Mexican envoy, Romero, given at length in the government report on extradition.

The decision of the supreme court of the United States in Benson *v.* McMahon, was in a case which arose under the treaty with Mexico. There is nothing in that treaty which touches the matter of procedure, and consequently nothing from which the necessity for a preliminary mandate could be argued. The treaty with Belgium contains this provision:

"Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers.

If the person whose extradition may be asked for, shall have

[1] *Re* Kaine, 14 How. 129; *Ex parte* Kaine, 3 Blatchf. 1; *Re* Henrich, 5 Blatchf. 414; *Re* Farez, 7 Blatchf. 34; *Re* Herris, 32 Fed. Rep. 583; *Re* Herris, 33 Fed. Rep. 165; *Ex parte* Ross, 2 Bond, 252; *Re* Kelley, etc.

[2] *Re* Thomas, 12 Blatchf. 370; Benson *v.* McMahon, 127 U. S. 457.

been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Belgium, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The president of the United States, or the proper executive authority in Belgium, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases."

It was under this language that Secretary of State Bayard informed the Belgian government, through the American minister at Brussels, that the department did not consider any preliminary mandate necessary. In writing to Minister Parkhurst, Mr. Bayard said:

"This judgment (Benson *v.* McMahon) settles the point that under section 5270 of the Revised Statutes of the United States, a fugitive from the justice of a government with which the government of the United States has a treaty or convention of extradition, may be arrested in this country and held for examination on the charge of having committed, in the foreign country, an offense specified in such treaty or convention, without any previous intervention on the part of the president or proof that a requisition has been made. Under this statute, it is believed that there exists in the United States a very liberal system of provisional arrest and detention of fugitives from foreign justice, under which, upon oaths made on information and belief (a requirement which the preliminary mandate formerly issued by the executive did not dispense with), such fugitives are constantly arrested, and held without interference on the part of the executive branch of the government of the United States, to await

examination before our judicial magistrates in accordance with our laws. No time is specified during which a fugitive may be so held; but the judicial officer decides in each case what term is reasonable, under all the circumstances, for the detention of the fugitive pending the reception of the formal proofs of his culpability and their examination. Save in cases in which the question of the necessity of executive interference was formerly raised, this department has received no complaints of the refusal of judicial magistrates to grant proper facilities. On the contrary, it is believed that such magistrates have generally construed their powers with as much liberality as is consistent with the security which all persons, both citizens and foreigners, should enjoy, against unfounded arrest and detention.

It is hoped that this statement will prove satisfactory to the Belgian government in respect to the subject of provisional arrest in the United States, and you are at liberty to communicate a copy of this paper to his excellency the minister of foreign affairs.

I am, sir, your obedient servant,

T. F. BAYARD."

It has also been held that no preliminary mandate is required under the Spanish treaty. The reasoning of that case is clear and satisfactory, and should be accepted as a correct exposition of the law. In addition to the reasons given by the learned judge, who decided that case, it may be said that the decisions in Inter-state Extradition furnish a clear and strong analogy in favor of his conclusion. The United States constitutional provision and statute regulating inter-state extradition, only authorize proceedings when a demand has been made by the executive of the state from which the fugitive fled. Most of the states have passed statutes providing for the provisional arrest of a fugitive in advance, and in expectation of a requisition afterwards to be presented, and these statutes being in aid of the constitutional provision have been upheld.[1] They furnish additional methods of carrying the constitutional provision into effect. The United States statute providing a method of procedure in foreign extradition, is to be regarded in the same way. It furnishes the only

[1] Hawley Inter-State Extrad. 52.

method where the treaty is silent on the subject; where the treaty provides a method, the statute, inasmuch as its terms do not limit its application, furnishes an additional method to that provided in the treaty. The statute is to be construed, as its language imports, as including all cases which arise under any treaty or convention regulating foreign extradition. The opinion of Judge Brown in the case above referred to, is as follows:

"Article 11 of the convention with Spain declares that 'requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties,' or in their absence, by its 'superior consular officers.' It next provides, that—

'It shall be competent for such representatives or such superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two governments shall, respectively, have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.'

The 'requisition (warrant?) for surrender,' above provided for is manifestly the application for the final warrant for the surrender of the fugitive, which can only be executed by the executive authority, after the judicial examination. That requisition is wholly different from the 'mandate or preliminary warrant of arrest,' which it is also 'competent to ask and obtain,' at the outset; and while it is thus competent to ask for such a preliminary warrant, the language of this section of the treaty is plainly permissive, and not necessarily obligatory, if other means are provided by law for obtaining a judicial investigation, preliminary to final surrender. Such means are plainly provided by section 5270 of the Revised Statutes, embodying the act of August 12, 1848 (9 St. at Large, 302). This section provides that—

'Whenever there is a treaty or convention for extradition,'

etc., 'any justice, commissioner,' etc., 'may upon complaint made under oath, charging any person found within the limits of any state, district or territory, with having committed within the jurisdiction of any such foreign government, any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge * * * he shall certify the same to the secretary of state, that a warrant may issue upon the requisition of the proper authorities of such foreign government for the surrender of such person, according to the stipulations of the treaty or convention, and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.'

The treaty with Spain was made on January 5, 1877, subsequent to the Revised Statutes; but section 5270 is evidently intended to apply to treaties that might thereafter be made, as well as to treaties then existing. It was so held in the case of Van Hoven, 4 Dill. 411, 414; and the act of August 12, 1848, which was substantially the same as section 5270, expressly declared that these provisions are to be applied 'in all cases in which there now exists, or hereafter may exist, any treaty or convention for extradition.'

Treaties duly ratified under the constitution (article 6) are doubtless a part of the supreme law of the land, and their stipulations and obligations will not be deemed annulled by acts of mere general legislation which can be reasonably construed otherwise. The Cherokee Tobacco, 11 Wall. 616, 623; Taylor *v.* Morton, 2 Curt. 454; Ropes *v.* Clinch, 8 Blatchf. 304, 309. But the mere fact that a treaty provides a mode of carrying out its provisions, in the absence of legislation, cannot make it incompetent for congress to pass laws in aid of the treaty, and, in order to facilitate the extradition of criminals, to dispense with a part of those preliminaries which otherwise it might be necessary for the foreign government to resort to. The procedure indicated by section 5270, above quoted, is in substance identical with that contemplated by the treaty with Spain, except that it dispenses

with any preliminary executive warrant. Had there been no law of congress on the subject, such an executive warrant would have been necessary in order to authorize the magistrates to proceed; but inasmuch as the law of this country expressly authorizes the magistrates to proceed, 'whenever there is a treaty or convention for extradition,' without reference to any preliminary executive warrant, such a warrant seems to me clearly unnecessary, if the demanding government chooses to avail itself of the law existing outside of the treaty, and proceed without the preliminary mandate.

This construction of the treaty has been adopted by the executive department. In an official letter from Mr. Frelinghuysen, secretary of state, to the Spanish minister, bearing date May 23, 1882, after referring to section 5270, Rev. St. above quoted, it is said:

'This provision of the statutes of the United States is deemed by the government to be in aid of the provisions of the convention; and the provisions of article 11 of the convention are held to be directory only. Under these circumstances the warrant of authorization from the secretary of state is not considered as indispensable. It may often happen that an instant arrest is expedient in order to secure the accused fugitive for examination into his criminality, and in such emergencies the delay incident to procuring the warrant of authorization from this department might defeat the purposes of justice. The personal rights, moreover, of the accused are secured by the provisions of the convention, no less than by those of the statute, inasmuch as he can only be surrendered on satisfactory evidence of his criminality.'

While the construction which may be placed by the executive department upon laws or treaties is not necessarily binding upon the judiciary, yet where its construction is not repugnant either to their letter or obvious intent, and, as in this case, is sustained by such manifest considerations of convenience and expediency, it should be adopted without hesitation. This construction is not repugnant to the language of this treaty. The preliminary warrant is permissive only. It is not made obligatory. It is not, in the language of this court in the case of Farez, 'made a prerequisite by the treaty.' Congress might have provided by law,

in the absence of any treaty, for an examination of offenders charged with committing crimes in foreign countries, and for their surrender if satisfactory evidence of guilt appeared. A person arrested under such a law could not be heard to complain that there was no treaty requiring his surrender, or, if the statute were followed, that his arrest was illegal. Congress has, in fact, provided that 'whenever there is a treaty or convention for extradition,' certain proceedings may be had. And this law is without regard to the particular provisions of the various treaties, and requires no previous executive mandate. The proceeding in this case was in strict accordance with this law of congress; and a proceeding which in all respects follows that law and all its conditions cannot be void so as to serve as the basis of an action for false imprisonment. Nor can it be said that this construction would make wholly useless the terms of a treaty allowing an application for a preliminary mandate. In the first place there may be no general law of Spain providing for any course of procedure outside of the treaty stipulations; and as this convention relates to both countries alike, it may have been necessary then, and in such case will be still, in all cases of applications by our government for the surrender of criminals by Spain, to obtain such a preliminary warrant, in order to authorize the magistrates of that country to proceed with a judicial investigation. Or, again, cases may arise of such a political character that it may be expedient and desirable that the demanding government, upon presentation of the facts, should obtain from the executive an immediate consideration and decision of the question involved in the surrender claimed, without the delay or publicity incident to a previous judicial examination; and in such a case it is still at the option of the demanding government to require a preliminary warrant and thus obtain the ruling of the executive at once.

In effect, under our law, two proceedings are available to the demanding government; one, according to the provisions of the treaty alone; and the other under the Revised Statutes as well; and so long as the provisions of neither are repugnant to the other, as in this case they are not, it is at the option of the demanding government to pursue either."[1]

[1] Castro *v.* DeUriarte, 16 Fed. Rep. 93.

The Complaint should be made by one authorized by the Foreign Government.

All of the cases agree that a complaint ought not to be received from a person who has no authority to speak for the foreign government from whom the requisition must come. The United States statute is silent upon the subject. It simply provides that certain officers "may, upon complaint made under oath, charging any person," etc., issue a warrant and proceed in the matter. But the end to be finally attained is the extradition of the person charged with crime, and this can only be had when a demand is made by the government whose laws have been offended. The whole proceeding from the beginning is to satisfy a treaty obligation to a foreign government which, alone, can determine when it will demand the rights accorded to it by the treaty. These are not treaties, like some others, which secure certain rights to the citizens or subjects of the contracting parties but only to the governments whose laws have been infracted.[1] Therefore, in this proceeding, persons seeking redress for some individual wrong cannot be recognized. The person making the complaint is listened to as the authorized agent of the foreign government and in that capacity only. The question which has been debated under this head is whether or not the complaint must contain a statement that it is made by authority or, in other words, whether it must show the authority of the complainant upon its face. Although there are decisions to the contrary it must be stated that the weight of authority is that law does not require such an allegation in the complaint.[2] This is in accordance with the general rule that where a complaint or other pleading is founded upon a statute it is not usually necessary to introduce allegations not required by or mentioned in the statute itself. The additions and limitations which other principles of law attach to the case are to be supplied by the evidence. But, as it is clear, that before the conclusion of the proceedings, the commissioner must be satisfied in some way that the proceeding is authorized by the foreign government;[3] it would be better in all

[1] *Re* Ferselle, 28 Fed. Rep. 878.

[2] *Re* Herres, 33 Fed. Rep. 165.

[3] *Re* Kelly, 26 Fed. Rep. 852; *Re* Ferrelle, 28 Fed. Rep. 878; *contra*, *Re* Dugan, 2 Low. 367.

cases that the complaint should aver the authority of the complainant. Where the complaint is made before a commissioner it and the warrant issued by him must in all cases recite his authority to act in extradition cases.[1]

It is Not Necessary that a Complainant Should have Personal Knowledge of the Commission of the Crime, but his Knowledge may be derived from Letters and Telegrams.

A mere direction by telegraph to secure or have arrested a person charged with the crime of murder would not authorize the swearing out of a warrant of arrest. The complainant must have knowledge of, and the complaint must charge the commission of, a particular crime with reasonable certainty. But the complainant may derive his knowledge from letters and telegrams from known officers or other persons whose positions or characters entitle their information to be credited, and such information affords probable cause for taking a complaint and issuing a warrant.[2] The complaint need not allege the crime with all the precision which is required in a common law indictment. It is sufficient if it shows that a crime within the terms of the treaty has been committed but, at the same time, it must contain a reasonably certain description of the crime which is charged.[3]

A complaint for extradition charging the accused with having "wilfully uttered and put in circulation forged or counterfeit papers or obligations or other titles, or instruments of credit" without specifying the kind of obligation forged, or the character of the papers or nature of the titles is too vague and uncertain to warrant an arrest.[4] It is not usually necessary that the complaint should allege that a prosecution has been commenced in the home jurisdiction for this is not in international extradition, as it is in inter-state extradition, always a necessary pre-

[1] *Re* Farez, 7 Blatchf. 34; *Re* Kelley, 25 Fed. Rep. 268.

[2] Castro v. De Uriarte, 16 Fed. Rep. 93; *Ex parte* Hoven, 4 Dill. 415; McMahon's case, 8 Sup. Ct. Rep. 1240; *Re* Farez, 7 Blatchf. 345.

[3] *Re* Roth, 15 Fed. Rep. 506; *Re* Charleston, 34 Fed. Rep. 531; Castro v. De Uriarte, 16 Fed. Rep. 93; *Re* McDonnell, 11 Blatchf. 79.

[4] *Ex parte* Hoven, 4 Dill. 411.

liminary.[1] If there is any technical defect in the complaint and warrant, a new complaint may be made and a new warrant issued by the commissioner or by a judge before whom the accused is brought on a writ of *habeas corpus*.[2]

NOTE.—The treaty with Japan requires that a warrant shall have been issued in the home jurisdiction.

The Proceedings before the Commissioner are Analogous to an Examination before a Committing Magistrate and are Governed by the Same Rules.

No person can be surrendered by the government of the United States to a foreign power until at least *prima facie* evidence of his guilt has been produced before a magistrate in this country. The extradition treaties of the United States without exception, provide that extradition shall be granted only "upon such evidence of criminality as, according to the laws of the place where the fugitive or the person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed." It appears from a report published by the Department of State that out of 604 persons whose extradition was demanded from the United States between August 9th, 1842, and January 1st, 1890, only 237 were surrendered. As the consequences of an unjust extradition are very serious, so the evidence on which it is sought ought to be very carefully scrutinized. Without enlarging upon this feature, the questions which have been raised and determined with regard to the examination will now be considered.

The evidence produced must satisfy the magistrate who conducts the examination that it would justify commitment for trial if the offense had been committed here. This is partly a question of law and partly a question addressed to the sound discretion of the examining officer. The evidence may be purely circumstantial but it is sufficient if it produces conviction.[3] So far as it is a question of law, the commissioner's decision is subject to review;

[1] *Re* Farez, 7 Blatchf. 345.
[2] 30 Fed. Rep. 607.
[3] *Re* Resch, 36 Fed. Rep. 546.

so far as it is a question addressed to his legal discretion, his decision is final. A reviewing court will revise the commissioner's decision so far as to see whether there was legal and competent evidence tending to prove the commission of the crime, but it will not review the commissioner's decision as to its sufficiency.[1] His discretion in this matter will only be reviewed by the department of state. The general nature of the examination was explained by the supreme court of the United States in this language: "The subject of what proof shall be required for the delivery upon requisition of parties charged with crime is considered in article 1 of the treaty, in regard to which it is provided 'that this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial if the crime had been there committed.' Taking this provision of the treaty and that of the Revised Statutes (sec. 5270) above recited, we are of opinion that the proceeding before the commissioner is not to be regarded as in the nature of a final trial by which the prisoner could be convicted or acquitted of the crime charged against him, but rather of the character of those preliminary examinations which take place every day in this country before an examining or committing magistrate for the purpose of determining whether a case is made out which will justify the holding of the accused either by imprisonment or under bail, to ultimately answer to an indictment, or other proceeding, in which he shall be finally tried upon the charge made against him. The language of the treaty which we have cited above, explicitly provides "that the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial if the crime had been there committed.' This describes the proceedings in these preliminary examinations as accurately as language can well do it. The act of congress conferring jurisdiction upon the commissioner or other examining officer, it may be noted in this connection,

[1] 33 Fed. Rep. 165; Oteiza *v.* Jacobus, 136 U. S. 330; 36 Fed. Rep. 546; *Re* Fowler, 18 Blatchf. 430; *Re* Stupp, 12 Blatchf. 501; *Re* Wahl, 15 Blatchf. 334; 14 Blatchf. 137; *Id.* 370.

says that if he deems the evidence sufficient to sustain the charge under the provisions of the treaty he shall certify the same, together with a copy of all the testimony, and issue his warrant for the commitment of the person so charged. We are not sitting in this court on the trial of the prisoner, with power to pronounce him guilty and punish him or declare him innocent and acquit him. We are now engaged simply in an inquiry as to whether, under the construction of the act of congress and the treaty entered into between this country and Mexico, there was legal evidence before the commissioner to justify him in exercising his power to commit the person accused to custody to await the requisition of the Mexican government."[1]

As the examination is not final in its character, a second examination may be had upon a new complaint and warrant, if in the first proceeding the prisoner should be discharged for technical defects or insufficiency in the proofs, provided that the errors or insufficiencies can be remedied.[2]

The pendency of an examination or a discharge on one charge is not a bar to another complaint and warrant being sworn out.[3]

A second examination is not to be resorted to unless a substantially different case is to be presented. It is not to be tried as an experimental measure, nor to see whether a different commissioner would come to a different conclusion. Such conduct would be justly censurable, and could only be considered as an attempt to evade the provisions of the law. If the first commissioner discharges for insufficiency of the evidence, that should end the matter, unless new and important evidence can be procured.

The prisoner is entitled to be present and hear the evidence against him, to have the assistance of counsel and the privilege of cross-examination. Documentary evidence and depositions are admissible against him, but not in his favor,[4] but he is entitled to have witnesses sworn in his behalf,[5] and if they are within the jurisdiction, that is, within the district where the

[1] Benson *v.* McMahon, 127 U. S. 457.
[2] *Re* Macdonnell, 11 Blatchf. 171.
[3] *Re* Macdonnell, 11 Blatchf. 171.
[4] *Re* Wadge, 15 Fed. Rep. 864; Oteiza *v.* Jacobus, 136 U. S. 330.
[5] 15 Fed. Rep. 864; 25 Fed. Rep. 868.

examination is had, and he is without means, he may demand that his witnesses be subpœnaed by the marshal at the expense of the government.[1] The commissioner may and should grant reasonable adjournments, and his discretion in this regard is not subject to review.[2] His decision will not be reversed for the admission of illegal or incompetent evidence, provided that when this is thrown out, there still remains sufficient legal evidence to justify his action.[3] If he should deny the accused his substantial rights, such as the right to introduce testimony at all, the proceeding would be void.[3] The accused is now entitled to be sworn as a witness in his own behalf; but before the United States statute permitting a defendant in a criminal case to be sworn, there was a conflict of opinion upon the subject.[4]

Evidence on the examination is to be produced according to rules governing ordinary examinations in criminal cases before United States magistrates, with a single exception. Documents which are admissible as evidence of guilt before the tribunals of the demanding government are made admissible by statute here. This subject is fully discussed in the succeeding section. But, with this exception, no change is made in the rules of evidence. All other evidence must conform to the law and practice which obtains in other criminal cases.

Certificates to the Authenticity and Evidentiary Value of Depositions and other Documents are Favorably Construed and where they are Wanting or Imperfect, the Defect may be Supplied by other Competent Evidence.

Section 5271 of the Revised Statutes of the United States provides that

"5271. In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants, or

[1] *Re* Macdonnell, 11 Blatchf. 170; *Re* Fowler, 18 Blatchf. 430; *Re* Stupp, 12 Blatchf. 501; Oteiza *v.* Jacobus, 136 U. S. 330; 4 U. S. Stat. 1882, chap. 378, sec. 3.

[2] *Re* Wadge, 16 Fed. Rep. 332.

[3] *Re* Kelley, 25 Fed. Rep. 268.

[4] *Re* Farez, 7 Blatchf. 345; *Re* Dugan, 2 Low. 367.

other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any such deposition, warrant or other paper, or copy thereof, is authenticated in the manner required by this section."

Section 5 of the Act of August 3, 1882, which it has been decided repeals and takes the place of Sec. 5271 of the Revised Statutes is as follows:

"Sec. 5. That in all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under title sixty-six of the Revised Statutes of the United States, such depositions, warrants and other papers or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper or copies thereof, so offered, are authenticated in the manner required by this act."

While in extradition cases the substance of the matter ought to be carefully examined before a man is taken away from the jurisdiction whose protection he is entitled to invoke, there are many reasons why strict technical accuracy is not to be required. The papers are prepared by persons who are educated under foreign codes of law and accustomed to different methods of procedure from those in use in the United States. If a merely technical objection is unnecessarily sustained, it must usually result in a considerable delay if not in a failure of the purposes of extradition altogether. Therefore, in these cases, American

magistrates, while for the most part careful not to allow extradition in cases where they were not sufficiently satisfied as to the merits,[1] have been solicitous to prevent a failure of justice by giving effect to merely technical objections.

There can be little question as to the intent and purpose of the different statutes of the United States which have from time to time prescribed the rules of evidence in these proceedings. Under all of them it was intended that such an amount of proof in degree or quantity should be produced as would induce a reasonable belief that the accused was guilty of the crime charged. The kind of evidence was to be such as might be received in the home jurisdiction for the purpose of issuing a warrant. It was not required that the kind of evidence should be produced which would be admissible upon a final trial. Consequently *ex parte* depositions taken before a criminal magistrate having authority to issue a warrant are receivable in evidence. And all of the statutes intended that wherever an original paper could be used for any purpose in the home jurisdiction, a duly authenticated copy should be admissible for the same purpose here. When these cardinal principles are kept in mind there can be little difficulty in dealing with any question which may arise. The question of the weight or the materiality of evidence must be determined by our law. The question of the competency of the evidence is to be determined by the foreign law. The weight or probative force of evidence is one thing; the competency or admissibility of the proof or instrument of evidence offered is quite another. For instance, our system of law rejects a confession made by the accused under the influence of hope or fear induced by threats or promises made by any person in authority. If the officer who arrests a prisoner threatens him with severity if he is obdurate in denying his guilt and promises him lenity or immunity if he will confess it and in this manner secures a confession, our law rejects it and will not allow it to be given in evidence. Other systems of jurisprudence would admit it. In proceedings before a commissioner the test of its admissibility is the law of the jurisdiction where the crime was committed. We reject, sometimes very unphilosophically, what is called hearsay

[1] *Re* Kelley, 2 Low. 339.

evidence. Other systems give such evidence the highest possible value as being much less likely to be fabricated than what we call direct or original evidence. Whether a deposition which contains only hearsay evidence shall be admitted, must be determined by the foreign law. The language of the statute is "legally authenticated so as to entitle them to be received * * * by the tribunals of the foreign country." If they are admissible there they are admissible here. This subject has been dwelt upon because in one case a learned judge made Greenleaf on Evidence the arbiter of the admissibility of evidence which had been introduced.[1] Now the foreign law is to be proven as a fact like any other fact in the case. It may be proven by the certificate of the consular or other diplomatic officer, and if this is regular in form it is conclusive. If this is wanting or defective, the proof may be supplied by any other competent testimony. The same rule applies to the genuineness of the documents where originals are offered in evidence and to the authenticity of copies where these are presented. In accordance with the rule which requires us to presume the regularity of official action, the fact that a foreign tribunal has received and acted upon the evidence which is offered here is *prima facie* proof of the admissibility and value of the evidence. A certificate that "the documents are authenticated in the manner required by the statute of the United States" has been held to be insufficient but the defect in the certificate was allowed to be supplied by the testimony of a police officer.[2] In another case, the proof as to the foreign law was supplied by one who had practiced law in the foreign country.[3] In another case a certificate in the following language was held insufficient:

"And I certify that all and every the certified copies hereunto attached, are properly and legally authenticated and certified according to the law in force in British India, so as to enable them to be used in evidence and as proof that the originals were duly received in evidence by the said Gilbert Stuart Henderson, Esquire, and the said Frederick John Marsden, Esquire, respectively, in proof of the criminality of the said Robert Bruce

[1] *Re* McPhun, 30 Fed. Rep. 57.
[2] *Re* Fowler, 18 Blatchf. 430; *Re* Wadge, 16 Fed. Rep. 382.
[3] *Re* Benson, 34 Fed. Rep. 649.

McPhun named therein, in respect of the said charges of forgery, uttering and cheating." [1]

The certificate of the American officer may be supplemented by the certificate of the foreign officials so as to render the depositions admissible, although they would not be if the certification of the American consular or diplomatic officer were alone considered.[2] A certificate of a judge that the judicial proceeding certified to "is valid evidence according to the laws existing in Prussia," reasonably interpreted means that according to the laws of Prussia such documents are valid evidence of criminality, and is sufficient.[3] If the certificate of the American diplomatic officer follows the statute, it is sufficient. If there is any ambiguity, it is the ambiguity of the statute, and the certificate must be construed to mean what the statute means.[4]

Where the treaty does not require that a prosecution should have been begun in the home jurisdiction, it is immaterial that a prosecution has been begun there for a different or inferior offense to that charged in the extradition proceedings.[5] And in construing the certificates attached to the papers, all of the papers and proceedings will be looked into to ascertain what is really intended.[6] So, when in a case under the treaty with Belgium, the certificate of the American minister certified that the papers were properly authenticated, so as to entitle them to be received as evidence of criminality, omitting the words "by the tribunals of Belgium," the certificate was held sufficient, inasmuch as it appeared that the documents were from the records of the tribunals in Belgium, and were authenticated by the Belgian functionaries.[7]

[1] *Re* McPhun, 30 Fed. Rep. 57.

[2] *Re* Farez, 7 Blatchf. 345.

[3] *Re* Behrendt, 22 Fed. Rep. 699.

[4] *Re* Behrendt, 22 Fed Rep. 699; *Re* Farez, 7 Blatchf. 345; *Re* Wadge, 15 Fed. Rep. 864.

[5] *Re* Roth, 15 Fed. Rep. 506.

[6] *Re* Roth, 15 Fed. Rep. 506.

[7] *Re* Stupp, 12 Blatchf. 501.

Form of Certificate to Properly Authenticate Copies of Depositions and Informations Taken Abroad.

In re Fowler, 4 Fed. Rep. 303, Judge Blatchford, now a justice of the United States supreme court, prescribes the following forms for authenticating depositions and informations taken abroad. That case also illustrates what oral evidence will be sufficient to authenticate papers which are not properly authenticated by the certificate.[1]

Judge Blatchford's Forms.

"I hereby certify that the signature of Angus Holden to the foregoing copy information, is, to best of my knowledge and belief, his signature and the signature of a magistrate in England having authority to take said information, and that the original of said information would be received in the tribunals of Great Britain, as evidence of the criminality of George Fowler, alias R. Gray, named therein, in respect of the offense charged against him as committed in Great Britain, namely, that he feloniously did forge, utter and put off certain orders purporting to be orders by William Jowett for the payment of money, to wit, bankers' cheques for the payment of the sum of £60, with intent thereby then and there to defraud, if the inquiry as to such criminality were being had in the tribunals of Great Britain, and that said copy information is authenticated according to the law of Great Britain. Godfrey Lushington, Assistant Under-Secretary of State for the Home Department. Whitehall, 2d October, 1880. Seal." "I certify that I believe the above signature, Godfrey Lushington, to be the handwriting of Godfrey Lushington, Esq., Assistant Under-Secretary of State for the Home Department. T. V. Lister, Assistant Under-Secretary of State. Foreign Office, 2d October, 1880. Seal." "I certify that I believe the above signature, T. V. Lister, to be the handwriting of T. V. Lister, Esquire, one of the Assistant Under-Secretaries of State for Foreign Affairs, and that the original of the foregoing copy information would be received in the tribunals of Great Britain, as

[1] For other cases which illustrate what oral evidence will be sufficient to authenticate papers in the absence of proper certificates, see *Re* Wadge, 16 Fed. Rep. 382; *Re* Kelly, 2 Low. 339; *Re* Benson, 34 Fed. Rep. 642.

evidence of the criminality of George Fowler, alias R. Gray, named therein, in respect of the offense charged against him as committed in Great Britain, namely, that he feloniously did forge, utter and put off certain orders purporting to be orders by William Jowett for the payment of money, to wit, bankers' cheques for the payment of the sum of £60, with intent thereby then and there to defraud, if the inquiry as to such criminality were being had in the tribunals of Great Britain, and that the foregoing documents are authenticated according to the law of Great Britain. In witness whereof I have subscribed my name, and caused the seal of this legation to be affixed hereto, this 7th day of October, 1880. J. R. Lowell, Envoy Extraordinary and Minister Plenipotentiary of the United States of America. Legation of the United States, London, October 7, 1880. Seal."

"I hereby certify, that the signature of W. Pollard to the foregoing deposition is, to the best of my knowledge and belief, his signature and the signature of a magistrate in England having authority to take the same, and that said deposition, certified as within, by said Pollard, to the taking thereof before him, and authenticated by a minister of state, and sealed with his official seal would be received in the tribunals of Great Britain, as evidence of the criminality of George Fowler, alias R. Gray, named in said deposition, in respect of the offense charged against him as committed in Great Britain, namely, that he feloniously did forge, utter and put off certain orders purporting to be orders by William Jowett, for the payment of money, to wit, bankers' cheques for the payment of the sum of £60, with intent thereby then and there to defraud, if the inquiry as to such criminality were being had in the tribunals of Great Britain. Godfrey Lushington, Assistant Under-Secretary of State for the Home Department. Whitehall, 2d October, 1880. Seal." "I hereby certify that I believe the above signature, Godfrey Lushington, to be the handwriting of Godfrey Lushington, Esquire, D. C. L., Assistant Under-Secretary of State for the Home Department. Julian Pauncefote, Assistant Under-Secretary of State for Foreign Affairs. Foreign Office, 7th October, 1880. Seal." "I hereby certify that I believe the above signature, Julian Pauncefote, to be the handwriting of Sir Julian Pauncefote, one of the Assistant Under-Secretaries of State for Foreign Affairs, and that the

foregoing documents are properly and legally authenticated so as to entitle them to be received in the tribunals of Great Britain, as evidence of criminality of George Fowler, alias R. Gray, named therein, in respect of the offense named therein, charged against him as committed in Great Britain, if the inquiry as to such criminality were being had in the tribunals of Great Britain. In witness whereof, I have subscribed my name, and caused the seal of this legation to be affixed, this 8th day of October, 1880. J. R. Lowell, Envoy Extraordinary and Minister Plenipotentiary of the United States of America. Legation of the United States, London, October 8, 1880. Seal."

DEPARTMENT OF STATE,

WASHINGTON, July, 1885.

INSTRUCTIONS IN RELATION TO APPLICATIONS FOR THE EXTRADITION OF FUGITIVE CRIMINALS.

First. When an extradition is sought for an offense of which the state courts have jurisdiction, the request must come from the governor of the state. When sought for an offense against the United States, the application should be made through the attorney-general or the proper executive department. All requests for the institution of proceedings for extradition should be addressed to the secretary of state and forwarded to the department of state, accompanied by the necessary papers as herein stated, and furnishing the full name of the person proposed for designation by the president to receive and convey the prisoner to the United States.

Second. The existing treaty provisions between the United States and foreign powers in reference to extradition, provide that the surrender shall only be made: Upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her commitment for trial if the crime had been there committed.

The evidence required to be used in the preliminary examination in the foreign state is as follows:

(1) If the fugitive has been convicted, and escaped thereafter, a transcript of the record of conviction and judgment duly certified under the seal of the court, with the personal certificate of the judge of the court as to its genuineness, and authenticated under

the great seal of the state where the conviction was had or under the seal of the proper federal court.

(2) If no trial has been had and an indictment has been found, a copy of the indictment, with a copy of bench warrant, if any has issued, and the return thereto, certified and authenticated as above prescribed.

(3) If no indictment has been found, but a prosecution has been instituted and a warrant of arrest issued, a copy of the procedure in such case, together with a copy of all the evidence upon which such warrant of arrest issued (so far as such copy can be procured), and a copy of the warrant with any return that may have been made thereto; all of which should be certified by the magistrate or judicial officer who issued the warrant, and if a justice of the peace or officer having no seal, his official character should be properly certified and the whole authenticated as above provided.

If the extradition of the fugitive is sought for several offenses, copies of the several convictions, indictments, or informations, certified and authenticated as hereinbefore directed, should be forwarded, and the request for extradition should name the several offenses.

All the papers herein enumerated should be transmitted in duplicate, one copy being required for the files of the department, and the other, duly authenticated by the secretary of state, will be returned with the president's warrant for the use of the agent who may be designated to receive the fugitive.

Thirdly. By the practice of some of the countries with which the United States have treaties, to entitle copies of depositions to be received in evidence, the party producing them is required to attest under oath that they are true copies of the original depositions, and it is therefore desirable that such agent, either from a comparison of the copies with the originals or from having been present at the attestations of the copies, should be prepared to make such declaration. When the original depositions are forwarded such declaration is not required.

A strict compliance with these formal requirements may save to the parties seeking the extradition of the fugitive criminal much delay and expense.

Procedure in Procuring the Surrender of a Fugitive from a Foreign Country.

The first step towards obtaining the surrender of a fugitive from a foreign country, is to institute a regular prosecution in the home jurisdiction where the crime was committed, and to procure a warrant of arrest. The British extradition act expressly requires that a warrant shall have been issued in the home jurisdiction. The treaties require that the person whose extradition is sought shall be "charged with" the offense for which his extradition is sought. It is held in inter-state extradition that a person is not "charged," in the sense of the constitution of the United States, until a formal legal prosecution has been begun against him in the home jurisdiction.[1] There seems to be no good reason why the same rule should not obtain in international extradition, although a contrary doctrine has been held.[2]

It has been held that the word *accusè* in the French treaty requires that a regular prosecution shall have been instituted.[3]

It is at least the safer and better practice to institute a prosecution at home before seeking the fugitive abroad.

In many parts of the United States, both in the state and in the federal courts, a prosecution is instituted and a warrant will be issued upon the swearing to a mere formal complaint. It is a practice which is not to be commended. Such a complaint cannot, in any true sense, be considered as evidence, and in looking at such a record it is impossible to know what facts were laid before the magistrate which influenced him to issue a warrant. It is not to be expected that such documents will be accepted in a foreign country as "such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense has been there committed." It is important, therefore, in all cases, that the formal complaint (or indictment, if an indictment has been found) should be supplemented by depositions, made by competent wit-

[1] Hawley Inter-State Extrad. 53; Tullis *v.* Fleming, 69 Ind. 15; *Ex parte* Morgan, 20 Fed. Rep. 298; Smith *v.* State, 28 N. W. Rep. (Neb.), 594; *Re* Lorraine, 16 Nev. 63.

[2] *Re* Roth, 15 Fed. Rep. 506.

[3] *Re* Metzger, 1 Barb. 248.

nesses, showing in detail the facts which establish the guilt of the fugitive whose surrender is sought. It is impossible to lay too much stress upon the importance of this matter. By referring to the memorandum of the department of state relating to the extradition of fugitives from the British territories, it will be seen that the copy of the indictment or of the information laid before an examining magistrate, should be "accompanied by one or more depositions setting forth, as fully as possible the circumstances of the crime. An indictment alone has been held to be insufficient." These depositions should be in narrative form, and contain particular statements of fact, and not conclusions of fact or law, or conclusions of mixed fact and law.

They should, in other words, contain in substance such a narrative of facts as the witness would be permitted and required to give when testifying upon the trial. Only such depositions can afford the "evidence of criminality" which the treaties require. The depositions should, in all cases, be taken before a magistrate authorized to act in the case under consideration and, if possible, all of the depositions should be taken before the same magistrate who issues the warrant. *Ex parte* affidavits taken before a notary public or a magistrate not authorized to act in the matter of the crime charged, cannot be regarded as the kind of evidence required.[1] The deposition ought to recite the authority of the magistrate before whom it is taken.

FORM OF REQUEST TO GOVERNOR TO APPLY TO THE PRESIDENT TO MAKE A DEMAND ON A FOREIGN GOVERNMENT.

To the Hon. . . . . Governor of . . . . . .

SIR.—I have the honor to request that you will apply to the President of the United States to demand from the government of . . . . . the extradition of . . . . . to the United States who stands charged with (or who has been convicted of) the crime of . . . . committed in the county of . . . in the State of . . . . on the . . . day of . . . . in the year . . . as appears by the papers hereto annexed, of which I sent triplicate copies.[2]

[1] *Ex parte* Fitzer, 28 Ind. 450.

[2] There should be three full sets of papers sent. One copy is kept by the governor, one is retained by the department of state at Washington, and the third set is forwarded with the requisition to the foreign government.

I am informed that the said .... is now in .... in .... within the territories of .....

I hereby certify that, in my opinion, the ends of public justice require that the alleged criminal be brought to this state for trial at the public expense, and that I am willing such expense shall be a charge on the country of .... in which the crime was committed.

I also certify that I have carefully examined into the facts, and verily believe that there is sufficient evidence to secure the conviction of the said fugitive.

I designate and recommend ....., a public officer, viz. ....., as a proper person to be appointed and commissioned as the agent of the United States to secure said ..... and bring him back to the United States for trial (or, in the case of one already convicted, punishment) and certify that he has no personal or private interest in the arrest and return of the fugitive other than that of a proper performance of public duty.

I am not aware of, and verily believe that there has not been, any former application for a requisition for the same person for the same offense which is the basis for this application.

I verily believe that the said fugitive is not now under either civil or criminal arrest.

I further certify that this request for extradition is made in good faith, with the sole purpose of prosecuting said fugitive for said offense, and not to secure his return to this state to afford opportunity to serve him with civil process nor to serve any other private end.

And I further certify that all the papers in triplicate have been compared with each other, and are in all respects exact counterparts.

And I further certify that the facts shown by the depositions show that the offense charged against the fugitive constitute the crime of ..... as defined by the statutes and decisions in this state.

Application for the extradition of said fugitive has not sooner been made because of, etc.

.....

Official Prosecutor for.....County.

The papers to accompany this application (in triplicate) are :

1. The complaint, information, affidavit, or indictment to which the fugitive is required to answer.

2. The warrant issued for his arrest.

3. The depositions which furnish the evidence of his guilt.

4. The depositions which show the reasons for believing that the fugitive is to be found within the territories of the government on which the demand is to be made.

5. The caption and conclusion of the depositions should be in the following form:

STATE OF..... } ss.
COUNTY OF..... }

IN THE MATTER OF A. B., CHARGED WITH THE CRIME OF.....

The deposition of....., taken and made before me..... (his name) (his official title), a magistrate duly authorized and empowered by law to enquire into and hear evidence concerning crimes committed in the (his territorial jurisdiction), and to issue warrants for the apprehension of persons charged with such crimes, who, being by me duly sworn and examined on his oath, deposes and says: I know .... etc..... Subscribed and sworn to before me at .... in the county of .... in the State of .... this .... day of .... in the year ....

These papers having been prepared and the papers of each of the three sets having been properly attached together, each set should have attached to it a certificate in the following form made by the officer who has the legal custody of the originals:

STATE OF..... } ss.
COUNTY OF... ..... }

I, Edmund F. Haug (official designation of the officer), do hereby certify that the above and foregoing are true and correct copies of the original (complaint, indictment, or as the case may be) and of the original warrant of arrest which was issued thereon and of the original depositions which were taken in support of said accusation, and which, under the laws of ..... are competent evidence of the criminality of the person named in said warrant. That I am the legal custodian of said originals, and that I have compared said copies with said originals and that they are true and correct copies of said originals.

In testimony whereof I have hereunto set my hand and affixed

the .... seal (designating the proper official seal) at ..... this ..... day of ..... in the year ....

EDMUND F. HAUG,
A Police Justice of the City of Detroit,
in said County of Wayne.

FORM OF REQUEST BY GOVERNOR THAT A DEMAND FOR EXTRADITION BE MADE BY THE PRESIDENT.

STATE OF .....

To the Secretary of State of the United States:

Whereas it has been made to appear to me, ..., governor of the state of ...., by information (complaint, affidavit or indictment or as the case may be), by depositions, and by warrant of arrest, of which copies are herewith transmitted, which I certify to be authentic, and I certify that Edmund F. Haug, by whom said copies are certified, is such magistrate and has such authority and jurisdiction as is represented in said certificate, and that the signatures to said certificates are the genuine signatures of said magistrate, and, said papers being duly authenticated in accordance with the laws of the state of ...., are entitled to full faith and credit, that ..... stands legally charged with (or been legally convicted of) the crime of ..... committed in ... ... in the county of ..... in said state of ..... on the ... day of .... in the year ...., and that the said ..... has fled from this state and is now to be found in .....within the ... of .... Now therefore I do hereby request that the president of the United States shall, in conformity with the treaty in such cases made and provided, request the proper authority that said ..... may be apprehended and surrendered to be returned to this state for trial (or punishment) for said offense.

And I designate and recommend ...., a public officer, viz., ..., as a proper person to be appointed and commissioned as the agent of the United States to receive said .... and bring him back to the county of ..... in the state of ..... for trial (or punishment) for the offense aforesaid.

Given under my hand and the ... seal of the state of ..... at the capitol in the city of ..... this ..... day of ..... in the year .....

.....
Governor.

FORM OF COMPLAINT UNDER SECTION 5270, REVISED STATUTES.

UNITED STATES OF AMERICA, }
DISTRICT OF..... } ss.

The complaint of ....., taken and made before me, ..., a Commissioner of the Circuit Court of the United States for the ..... District of ....., who have been duly authorized by said court (or whatever court the authorization comes from) to hear complaints and issue warrants under Section 5270 of the Revised Statutes of the United States, on the ..... day of ..... in the year ..... at ..... in said district, who, being by me duly sworn on his oath, complains and says:

That he is (his official character) and is duly authorized by the Government of ..... to make this complaint to the end that ..... may be apprehended and held for extradition to ....., there to be tried (or punished) for the crime hereinafter set forth.

That heretofore, to wit, on the ..... day of ..... in the year ..... at ..... in ..... in the ..... of ..... the said ..... committed the crime of ..... in manner following, that is to say. That then and there the said ..... (here set forth the particulars of the crime).

That the said acts constitute the crime of ..... within the meaning of the extradition treaty between the United States of America and the ..... of ..... That the said ..... is now a fugitive from the justice of ..... and is in ..... in ..... within the territorial jurisdiction of the United States of America.

Wherefore the said complainant prays that a warrant may issue for the apprehension of the said ..... and that he may be brought before the said commissioner to the end that, upon the production of proper and sufficient evidence of his guilt of said offense, he may be held for extradition to the ..... for said offense in accordance with the treaty and statutes in such case made and provided.

.....

Subscribed and sworn to before me at ..... in said District this ..... day of ..... in the year .....

.....

United States Commissioner, and Commissioner duly authorized to act in extradition cases.

FORM OF WARRANT.

The President of the United States of America, to the Marshal of the United States for the . . . . . District . . . . . or his deputies, or either of them: Greeting—

Whereas, in conformity with the treaty of extradition existing between the United States of America and the . . . . . of . . . . . and in accordance with the provisions of the statutes for carrying the same into effect, complaint has been made before me . . . . . a Commissioner of the Circuit Court of the United States for the . . . . . District of . . . . . who have been duly authorized to hear complaints and issue warrants under Section 5270 of the Revised Statutes of the United States, that . . . . . has been guilty of, and stands charged with (or has been convicted of) the crime of . . . . . [1] mentioned in said treaty, committed on the . . . . . day of . . . . . in the year . . . . . in . . . . . in . . . . . within the territories of . . . . . and that said . . . . . is now a fugitive from the justice of . . . . . and is now in . . . . . in . . . . . within the territorial jurisdiction of the United States of America.

Now, therefore, you and each of you are hereby commanded forthwith to apprehend the . . . . . and bring him before me, the said commissioner, to the end that upon the production of proper and sufficient evidence of his guilt of said offense, he may be held for extradition to the . . . . . for said offense in accordance with the treaty and statutes in such cases made and provided.

Given under my hand and official seal at . . . . . in said district this . . . . . day of . . . . . in the year . . . . . .

. . . . . .

United States Commissioner, and Commissioner duly authorized to act in extradition cases.

THE COMMISSIONER'S RECORD.

The Commissioner is required to keep a complete record of all the proceedings had before him and of all the evidence taken in the case. He should note all the adjournments and the reasons for them, and at the request of the respondent or his counsel,

[1] It is not necessary that the warrant of arrest should state the details of the crime: 1 Bish. Crim. Proced. Sec. 794; it is enough that it shows that a treaty crime is charged: *Re* McDonnell, 11 Blatchf. 79.

note all objections which are interposed to the legality of the proceedings. Only objections which affect the jurisdiction of the commissioner are available. As we have seen, mere irregularities will not vitiate the proceedings. This is in accordance with the law governing preliminary examinations to which this proceeding is analogous. Objections to the competency of evidence should be noted, for it is a general rule that objections to evidence for incompetency are waived unless insisted upon. If they are insisted upon and the evidence is really incompetent, it must be rejected when the case is reviewed to see whether the evidence justifies the action of the commissioner. Objections for irrelevancy or immateriality, which are frequently of prime importance in jury trials, are of no consequence in these proceedings. Irrelevancy or immateriality of evidence is always apparent upon its face and the failure to make the objection waives nothing where the evidence itself is to be examined by an appellate tribunal.

The following form for the commissioner's record is recommended:

IN THE MATTER OF ..... CHARGED UNDER SECTION 5270 OF THE REVISED STATUTES AS A FUGITIVE FROM THE JUSTICE OF ..... WITH THE CRIME OF .....

Before.....Esq., United States Commissioner duly authorized to act in extradition cases.

July 15, 1892. The said ..... having this day been brought before me under the warrant heretofore issued by me in the above entitled matter and ..... appearing on behalf of (the foreign government) and ..... (or no counsel as the case may be) appearing on behalf of the said ..... I thereupon read to him the complaint of ..... on which said warrant issued and thereupon upon my own motion, (or upon motion of ..... as the case may be) I fixed the ..... day of ..... next at ..... o'clock ..... M. at my office No. ..... street in the ..... of .....[1] as the time and place when I would proceed to a hearing of the evidence in the matter.[2]

[1] NOTE.—The act of 1882 requires that the hearing "shall be held on land, publicly, and in a room or office easily accessible to the public."

[2] If the adjournment is of unusual length, the record ought to show the ground on which it was granted.

Thereupon the said ..... was by me remanded to the custody of the marshal of the United States for this district until that time.

.....

Commissioner.

July 19th, 1892, 10 o'clock A. M.

The said ..... being present and ..... appearing on behalf of the Government of ..... and the parties being ready to proceed thereupon, one ..... being produced as a witness in support of said accusation (or on behalf of said respondent as the case may be) and having been by me first duly sworn was examined by ..... and on his oath did depose and say. (Here insert the testimony of the witness. It is better to take it in narrative form unless for any reason either side requests the questions as well as the answers to be taken down.)

The conclusion of the deposition will be as follows:

Examination taken, reduced to writing, and sworn to before me this ..... day of ..... in the year .....

.....

Commissioner.

In the case of documentary proof being offered, the commissioner should report as follows:

The deposition of ..... taken in ..... and duly certified in accordance with law, as appears by said deposition and the certificates thereto annexed, hereto attached, was offered in evidence in support of said accusation and was by me received, read and considered.

Or,

And the same having been duly translated by ..... a witness duly sworn and examined by me for that purpose, whose translation of the same is thereto attached.

Or,

In case for any reason the certificates are defective, and oral evidence is offered to authenticate the depositions, give in full the testimony of the witness authenticating the same.

In case the fugitive offers to return without a warrant of extradition, he may do so. In such case the commissioner

should note the fact upon his record, and he will certify the proceedings to the department of state in accordance with the facts which in such a case has issued a warrant of surrender.[1] If the commissioner should deem the evidence insufficient, he should discharge the person and certify the matter to the secretary of state. In such a case the government has no power to surrender the fugitive, but it ought to have the record before it for the purpose of determining whether or not it will authorize fresh proceedings in case these are sought.

FORM OF COMMISSIONER'S CERTIFICATE TO SECRETARY OF STATE.

IN THE MATTER OF.....CHARGED UNDER SECTION 5270 OF THE REVISED STATUTES, AS A FUGITIVE FROM THE JUSTICE OF.....WITH THE CRIME OF.....

Before JOHN GRAVES, Esq., United States Commissioner, duly authorized to act in extradition cases.

EASTERN DISTRICT OF MICHIGAN, *ss.*:

To the Secretary of State of the United States:

I, John Graves, a Commissioner of the Circuit Court of the United States for the Eastern District of Michigan, who have been duly authorized by said Court to act as Commissioner, under the statutes of the United States relative to the extradition of persons charged with crime, do hereby certify to the Secretary of State of the United States, that the annexed and foregoing papers are the original complaint and warrant and a true and complete record of the proceedings had, and a true and complete copy of all the testimony taken before me in the above entitled matter.

I do further certify that I deem the said evidence sufficient to sustain the charge in said complaint, under the provisions of the treaty between the United States and .....

Wherefore I, the said Commissioner, have issued my warrant for the commitment of the said ..... to the ..... jail at ..... there to remain until he shall be surrendered for extradition to ..... on the charge contained in said complaint, or thence discharged in accordance with law.

[1] Haimant's case, August, 1889.

Given under my hand and official seal, at Detroit, in said District, this ..... day of ..... in the year .....

JOHN GRAVES,
U. S. Commissioner, duly authorized to act in extradition cases.

If the commissioner deems the evidence sufficient, and commits the prisoner to await the action of the department of state, the accused may sue out a writ of *habeas corpus*, and an ancillary writ of *certiorari*, in the United States court, and demand a judicial determination whether the proceedings which have been had justify his deportation from the United States. This writ can only be sued out in a federal tribunal, for, although it has been claimed that the state courts have authority to inquire into the cause of detention of anybody imprisoned within the limits of the state, it is now settled that where a person is imprisoned or detained by a national officer, under color of national authority, only a federal court can inquire into the legality of the imprisonment.[1] The writ will issue out of the district or circuit court, and appeals will lie to the circuit,[2] and from the circuit to the supreme court. At the same time that the writ of *habeas corpus* issues to the marshal who has the prisoner in charge, a writ of *certiorari* should issue to the commissioner by whom the prisoner was committed. The writs of *habeas corpus* and *certiorari* are not to be used for correcting mere irregularities, but are only directed against jurisdictional defects. The court will not reverse the decision of the commissioner because some incompetent evidence was admitted, nor substitute its judgment for the commissioner's upon the sufficiency of the testimony. It will only inquire whether there was legal evidence before the commissioner which supports his judgment.[3]

Bail has been allowed in a case of inter-state extradition,[4] and no reason is perceived why it ought not to be allowed in cases of international extradition as well. The reasons which govern in one case apply with equal force to the other.

[1] U. S. *v.* Booth, 21 How. 513; Robb *v.* Connolly, 111 U. S. 624.

[2] Roberts *v.* Reilly, 116 U. S. 80; Benson *v.* McMahon, 127 U. S. 457.

[3] *Ex parte* Van Aernam, 3 Blatchf. 160; *Re* Stupp, 12 Blatchf. 501; *Ex parte* Van Hoven, 4 Dill. 415; Benson *v.* McMahon, 127 U. S. 463.

[4] Roberts *v.* Reilly, 116 U. S. 80.

FORM OF PETITION FOR HABEAS CORPUS AND CERTIORARI TO UNITED STATES JUDGE.

To the Honorable A. B., Judge of the..... Court of the United States for the..... District of.....

The petition of C. D. respectfully shows:

That he is now imprisoned and restrained of his liberty by Salmon S. Matthews, Marshal of the United States, for the Eastern District of Michigan, at the Wayne County jail in the City of Detroit, in said district.

That your petitioner is thus imprisoned and held in custody under color of the authority of the constitution and laws of the United States, relating to the return of fugitives from justice to foreign countries with which the United States has concluded treaties of extradition.

That said Salmon S. Matthews claims to hold in custody and imprison your petitioner to await the action of the secretary of state of the United States, under and by virtue of a certain warrant of commitment issued by John Graves, U. S. Commissioner, of which a true copy is hereto attached. (If a copy of the warrant has been requested and refused, allege the fact and that the legal fees for a copy were tendered.)

That said imprisonment is illegal and in violation of the constitution and laws of the United States for the following reasons: (Here set forth the grounds on which it is claimed that the attempted extradition is illegal.)

Wherefore your petitioner prays that a writ of *habeas corpus* may issue out of the..... court of the United States for the ..... district of..... to the said Salmon S. Matthews, requiring him to produce the body of your petitioner before said court at some convenient time to be therein designated, there to abide what shall be awarded by the court in the premises, and that your petitioner may be discharged from said imprisonment.

Your petitioner also prays that a writ of *certiorari* may issue out of said court to said John Graves, U. S. Commissioner, requiring him to certify to said court with all convenient speed the record proceedings and evidence by virtue of which he assumed to issue said warrant of commitment.

.....

.....DISTRICT OF..... } ss.
COUNTY OF..... }

On this ..... day of ..... in the year 189 . , before me, ..., personally appeared ....., the above named petitioner, and, being by me duly sworn, made oath that the foregoing petition by him subscribed is true in substance and in fact.

.....
.....
....

Endorsement:

Eastern District of Michigan, *ss.*

Let writs of *habeas corpus* and *certiorari* issue as within prayed.

HENRY H. SWAN,
Judge of the District Court of the United States for the Eastern District of Michigan.

The expenses in extradition cases are to be borne by the demanding government. In cases where it is sought to extradite persons from the United States, the legal fees are paid in the first instance by the United States which collects them in turn from the foreign government. In cases where extradition to the United States is sought the costs are to be paid by the state or the United States as the case may be and the agent of a state should be supplied with funds or authority to make all proper drafts for that purpose.

In extradition from Canada the demand by the department of state is made on the British minister at Washington or in his absence on the Canadian minister of justice. The Canadian law permits a provisional arrest in advance of a requisition. When this is desired an officer armed with the original, or duly certified copy of the warrant of arrest may be sent at once to the place in Canada where the fugitive is to be found and swear out a warrant under the Canadian statute.[1]

[1] *Re* Weir, 16 Ont. Rep. 389.

APPENDIX.

REVISED STATUTES OF THE UNITED STATES.

1878.

TITLE LXVI.

EXTRADITION.

Sec.		Sec.	
5270.	Fugitives from the justice of a foreign country.	5276.	Powers of agent receiving offenders delivered by a foreign government.
5271.	Evidence on the hearing.	5277.	Penalty for opposing agent, &c.
5272.	Surrender of the fugitive.	5278.	Fugitives from justice of a state or territory.
5273.	Time allowed for extradition.	5279.	Penalty for resisting agent, &c.
5274.	Continuance of provisions limited.	5280.	Arrest for deserting seaman from foreign vessels.
5275.	Protection of the accused.		

Sec. 5270. Whenever there is a treaty or convention for extradition between the government of the United States and any foreign government, any justice of the supreme court, circuit judge, district judge, commissioner, authorized so to do by any of the courts of the United States, may, upon complaint made under oath, charging any person found within the limits of any state, district, or territory, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge or commissioner, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or conven-

tion, he shall certify the same, together with a copy of all the testimony taken before him, to the secretary of the state, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

SEC. 5271. (In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section). (In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants or other papers offered in evidence, shall be admitted and received for the purpose of such hearing if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused party shall have escaped, and copies of any such depositions, warrants, or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States, resident in such foreign country, shall be proof that any such deposition, warrant or other paper, or copy thereof, is authenticated in the manner required by this section).[1]

SEC. 5272. It shall be lawful for the secretary of state, under his hand and seal of office, to order the person so committed to

[1] See sections 5 and 6 of the act of 1882.

be delivered to such person as shall be authorized, in the name and on behalf of such foreign government, to be tried for the crime of which such person shall be so accused, and such person shall be delivered up accordingly; and it shall be lawful for the person so authorized to hold such person in custody, and to take him to the territory of such foreign government, pursuant to such treaty. If the person so accused, should escape out of any custody to which he shall be committed, or to which he shall be delivered, it shall be lawful to retake such person in the same manner as any person, accused of any crime against the laws in force in that part of the United States to which he shall so escape, may be retaken on an escape. [See sections 5409, 5410].

SEC. 5273. Whenever any person who is committed under this title or any treaty, to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, it shall be lawful for any judge of the United States, or of any state, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the secretary of state, to order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.

SEC. 5274. The provisions of this title, relating to the surrender of persons who have committed crimes in foreign countries, shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer.

SEC. 5275. Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the president shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such

crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

SEC. 5276. Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

SEC. 5277. Every person who knowingly and wilfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year.

SEC. 5409. Whenever any marshal, deputy marshal, ministerial officer, or other person, has in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, and such marshal, ministerial officer, or other person voluntarily suffers such prisoner to escape, he shall be fined not more than two thousand dollars, or imprisoned for a term not more than two years, or both.

SEC. 5410. The preceding section shall be construed to apply not only to cases in which the prisoner who escaped was charged or found guilty of an offense against the laws of the United States, but also to cases in which a prisoner may be in custody, charged with offenses against any foreign government with which the United States have treaties of extradition.

STATUTES OF THE UNITED STATES.

FORTY-SEVENTH CONGRESS.

CHAP. 378.—AN ACT REGULATING FEES AND THE PRACTICE IN EXTRADITION CASES.

August 3, 1882.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.

Sec. 2. That the following shall be the fees paid to commissioners in cases of extradition under treaty stipulation or convention between the government of the United States and any foreign government, and no other fees or compensation shall be allowed to or received by them:

For administering an oath, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio.

For each copy of the same furnished to a party on request, ten cents for each folio.

For issuing any warrant or writ, and for any other service, the same compensation as is allowed clerks for like services.

For issuing any warrant under the tenth article of the treaty of August ninth, eighteen hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any person charged with any crime or offense as set forth in said article, two dollars.

For issuing any warrant under the provision of the convention for the surrender of criminals, between the United States

and the King of the French, concluded at Washington, November ninth, eighteen hundred and forty-three, two dollars.

For hearing and deciding upon the case of any person charged with any crime or offense, and arrested under the provisions of any treaty or convention, five dollars a day for the time necessarily employed.

Sec. 3. That on the hearing of any case under a claim of extradition by any foreign government, upon affidavit being filed by the person charged setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard may order that such witnesses be subpœnaed; and in such cases the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner that similar fees are paid in the case of witnesses subpœnaed in behalf of the United States.

Sec. 4. That all witness fees and costs of every nature in cases of extradition, including the fees of the commissioner, shall be certified by the judge or commissioner before whom the hearing shall take place to the secretary of state of the United States, who is hereby authorized to allow the payment thereof out of the appropriation to defray the expenses of the judiciary; and the secretary of state shall cause the amount of said fees and costs so allowed to be reimbursed to the government of the United States by the foreign government by whom the proceedings for extradition may have been instituted.

Sec. 5. That in all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under title sixty-six of the Revised Statutes of the United States, such depositions, warrants and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing, if they shall be properly and legally authenticated, so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign

country shall be proof that any deposition, warrant or other paper or copies thereof, so offered, are authenticated in the manner required by this act.

Sec. 6. The act approved June nineteenth, eighteen hundred and seventy-six, entitled "An act to amend section fifty-two hundred and seventy-one of the Revised Statutes of the United States," and so much of said section fifty-two hundred and seventy-one of the Revised Statutes of the United States as is inconsistent with the provisions of this act are hereby repealed.

Approved, August 3, 1882.

EXTRADITION TREATIES OF THE UNITED STATES WITH FOREIGN POWERS.

AUSTRIA-HUNGARY.

Concluded July 3, 1856; Ratifications exchanged at Washington December 13, 1856; Proclaimed December 15, 1856.

ARTICLE I.

It is agreed that the United States and Austria shall, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and deliv-

ery shall be borne and defrayed by the party who makes the requisition and receives the fugitive. The provisions of the present convention shall not be applied, in any manner, to the crimes enumerated in the first article committed anterior to the date thereof nor to any crime or offense of a political character.

ARTICLE II.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE III.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up, under the stipulations of this convention, until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE IV.

The present convention shall continue in force until the first of January, eighteen hundred and fifty-eight, and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, 1858.

AUSTRIA-HUNGARY.

Three reports have been received from the legation of the United States at Vienna. The first, by Mr. Lawton, of January 30, 1889, contains the following passages:

The Austrian government has not, up to the present time, as far as known to this legation, seen fit to enact any special laws in regard to the question of extradition beyond the short extracts from the "Strafgesetz" and "Strafgesetz Ordnung" enclosed

herein. Such precedents and customs as exist are based on the prevailing law of the empire, and are, in each particular case, carried out in accordance with the provisions of the treaty existing between Austria-Hungary and the power making request for extradition.

These treaties are fairly uniform in character, though those concluded many years ago are necessarily less complete and precise than those of later date. Especially may this be noticed as to the existing treaty between the United States and Austria-Hungary, concluded July 3, 1856. Many important provisions, such as additional crimes for which extradition can be granted, the apprehension of fugitives by telegraph, delivery of articles seized in possession of the person to be surrendered, payment of the expenses of extradition, transportation across territory of a fugitive surrendered by a third power, etc., are entirely omitted in this treaty with the United States; and in addition it appears to lack the clearness of those more recently concluded.

The treaties between Austria-Hungary and England (16th April, 1874), Belgium (12th January, 1881), and Brazil (21st May, 1883), are the most full and complete, as well as the latest, negotiated.

As by the instructions of the department circular I am directed to take into consideration how far the documents forwarded furnish a definite answer to the questions asked, and as a perusal of the treaties above mentioned will give full information on nearly all the points desired, I confine myself, therefore, in this report, to questions which are not covered by the treaties, and to additional miscellaneous information relating to the subject.

From information obtained through the ministry of foreign affairs, it has been ascertained that the Austro-Hungarian government will grant extradition in the absence of a conventional obligation, in accordance with the practice of the prevailing law of Austria and Hungary.

Extradition under such circumstances, must, however, be reciprocal.

I am informed, that upon a report being made by the judicial authorities to the minister of justice, stating whether extradition should or should not be granted, such minister, after approving

or disapproving the finding of the lower courts, communicates in turn his decision to the imperial and royal ministry of foreign affairs.

The decision of the minister of justice is understood to be final, unless the ministry of foreign affairs should show that it is not in accordance with the particular treaty under which proceedings are taken.

The question of extradition is finally decided by the minister of justice, after receiving a report of the decisions of the lower courts. He in turn forwards his decision to the minister of foreign affairs for transmission, diplomatically to the demanding state.

Extradition will not be granted—

(1) For political offenses, always excepting attempts on the life of the sovereign or members of his family.

(2) For crimes which have become outlawed.

(3) When the fugitive has been prosecuted and aquitted in the state from which extradition is asked, for the same crime which has led to a demand for his extradition.

(4) When the offense, committed outside of the state from which extradition is requested, does not, according to the laws of both the contracting states, involve a punishment of a year's imprisonment or more.

(5) Nor will a fugitive be kept in arrest in the state to which he has been surrendered on account of another previous crime, nor on any other grounds than those of his surrender, unless such person has, after his surrender, had ample opportunity of returning to the country whence he was surrendered.

Extradition will take place: For participation in crimes as accessory either before or after the act, provided such participation be punishable by the laws of both contracting countries.

If an individual whose extradition is demanded, be also claimed by one or several other powers on account of other crimes committed in their territory, he shall be surrendered to the government in whose territory his greatest crime was committed, and if his crimes were all of the same gravity, or a doubt exists as to which is the greatest, to the government which first made application for his surrender.

No requisition for a surrender can be based on a conviction "*in contumaciam*."

The extradition shall not take place before the expiration of fifteen days from the apprehension.

Requisitions should contain full description of the fugitive, and all information which may assist in his identification.

In case any doubt should arise as to the offense coming under the head of those mentioned in a convention, explanation will be asked for, and after due examination, the state from whom extradition is requested will decide whether it shall be granted.

The second report, also by Mr. Lawton, bears date February 30, 1889, and inclosed: (1) A translation of a note from the ministry of foreign affairs; (2) translation of rules governing extradition of criminals in the kingdom of Hungary:

[Inclosure 1—Translation.]

Mr. Pasetti to Mr. Lawton.

VIENNA, February 2, 1889.

In the note of December 18th last, the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. A. R. Lawton, was pleased to communicate to the imperial and royal minister of foreign affairs his desire to obtain information relative to the extradition of criminals in Austria-Hungary, and the laws and treaties pertaining to the same.

The ministry of foreign affairs thereupon immediately placed itself in correspondence with the ministries of justice at Vienna and Budapesth, and now begs to transmit to the honorable envoy the desired information.

As regards the kingdoms and countries represented in the Reichsrath, the ministry of foreign affairs begs to place at the disposal of the honorable envoy the accompanying pamphlet containing the provisions of the criminal law in force in the Austrian part of the empire; the proceedings relating to extradition; the decrees promulgated and the treaties concluded up to the year 1885.

Of the treaties at present in force, the only one not contained in the above mentioned pamphlet is the one concluded with the principality of Monaco, as its ratification took place immediately after publication of the volume, and copy of which has, as inti-

mated in the esteemed note, probably already been procured at the imperial printing office.

The ministry of foreign affairs furthermore begs to direct the attention of the honorable envoy to the fact that no formal extradition treaties exist with Denmark, Portugal, Turkey, Greece, and Roumania.

A mutual understanding, however, in regard to the extradition of criminals, has established itself by custom between Austria and Hungary on the one part and Turkey on the other. Extradition being thereby sanctioned (on condition of reciprocity) from Austria-Hungary to Turkey, unless the criminal be a Christian, and *vice versa* unless he belong to the Mohammedan faith.

The laws governing the extradition of criminals in the countries of the Hungarian crown are given in the accompanying statement.

The ministry of foreign affairs finally begs to remark that this statement contains the answers to the questions which the honorable envoy had previously addressed to this ministry. It will, however, in due course, transmit any supplementary communication which may be received from the imperial royal ministries of justice at a later date.

The undersigned avails, etc.

For the minister of foreign affairs and imperial household,

M. PASETTI.

[Inclosure 2—Translation.]

Principles ruling the extradition of criminals in Hungary.

The principles ruling the extradition of criminals are found partly in the criminal laws and treaties concluded with foreign powers, partly also in decisions and decrees of the minister of justice and of courts of law, rendered in special cases, and which have become precedents.

The provisions of treaties are imperatively binding upon states with whom such treaties have been concluded.

In consequence of Article III of the treaty of September 20th, 1870, relating to the naturalization of emigrants, the provisions of the extradition treaty of July 3rd, 1856, between Austria-Hungary and the United States are especially binding.

No special law of extradition exists in Hungary. A few provisions governing the same are contained in the criminal laws. According to Article V of the law of 1878, paragraph 17, a Hungarian subject can never be surrendered to the authorities of a foreign state. Subjects of other parts of the empire can only be surrendered to their own state authorities. Paragraph 14 of Article XI of the law of 1879 provides that no extradition can be granted for a simple misdemeanor.

As regards civilized nations, in the case of a demand for extradition where no treaty exists, on the assurance of reciprocity being given, the general rules as to extradition will be applied as contained in the treaties most recently negotiated with other states.

Proceedings in matters of extradition are usually taken by the courts (and always when treaties so provide) on motion of the attorney general during the confinement of the fugitive. The judge then questions the prisoner and carries on the further official examination as speedily as practicable. After the close of the examination the attorney general makes a motion based on the merits of the case and the court gives its decision. The latter is officially submitted to the minister of justice, who, after due deliberation, gives a final decision respecting extradition.

This decision is brought to the knowledge of the state asking for extradition through diplomatic channels.

The third report, made by Mr. Grant, bears date August 16, 1889, and incloses a translation of a note from the Austro-Hungarian ministry of foreign affairs, which is as follows:

[Inclosure—Translation.]

Mr. Pasetti to Mr. Grant.

VIENNA, August 10, 1889.

In the note of February 2, 1889, the imperial royal ministry of foreign affairs had the honor of transmitting to the honorable envoy extraordinary and minister plenipotentiary of the United States of America, Frederick D. Grant, a collection of all the laws, regulations, and treaties governing the extradition of criminals in Austria-Hungary, with the information that a supplement, furnishing additional answers to various questions asked, would be sent as soon as received from the imperial royal minis-

try of justice. The ministry of foreign affairs now begs leave to enclose herewith to the honorable envoy of the United States the information subsequently obtained.

The first question: "Does the government extradite in the absence of a conventional obligation?" is answered in paragraphs 39, 40, and 41 of the criminal law, according to which the granting of extradition is by no means dependent upon the existence of a treaty stipulating the same.

In case a treaty exists with a state, the question depends upon its provisions, as there are some treaties where it is specially provided that extradition will be granted only in case of transgressions specified.

If the treaty has no special provisions, the answer will depend upon the manner in which paragraphs 39 and 40 of the criminal law are construed.

Whenever any difference of opinion has arisen upon this point and it has been claimed that extradition, although not provided for by a treaty with the government making the demand, should be granted, nevertheless, under paragraph 39 of the criminal code, the rule adopted has been that the said paragraph 39 is inapplicable to such cases within the meaning of paragraph 41 of the criminal code, in conformity to which procedure is regulated where special treaties exist with foreign states for the reciprocal extradition of criminals. There exists no obligation to surrender criminals to states with which no extradition treaty exists.

This practice has been followed constantly and for a long number of years by the imperial royal ministry of justice, which has jurisdiction of all proceedings connected with extradition.

In view of this practice the next two questions, 2 and 3, can be answered only as far as regards states with which no treaty exists.

The second question: "Under what conditions will extradition be granted?" is answered by paragraphs 38 and 39 of the criminal law, under paragraph 59 of the code of criminal procedure.

Only foreigners can be surrendered. Persons who were formerly such, and have acquired Austrian or Hungarian citi-

zenship afterwards, or after committing the crime, can not be surrendered.

Whether a person can be surrendered, who at the time of the perpetration of the crime abroad was an Austrian or Hungarian citizen, and became a foreigner afterwards, must be regarded as an open question.

Extradition takes place only for offenses committed abroad; if the offense was partly committed in Austria-Hungary no extradition is granted.

If a foreigner has committed high treason against Austria-Hungary, or has counterfeited Austrian money or securities, no extradition is granted.

Extradition takes place only for crimes punishable according to the criminal law of Austria, but not for simple misdemeanors or transgressions. Political acts committed abroad, if not punishable by the criminal laws of Austria, can by no means constitute ground for extradition.

Extradition for political offenses or actions connected therewith, is regularly refused for reasons stated in most of the extradition treaties, although the laws contain nothing positive on that point. An attempt on the life of the chief of a foreign state, or a member of his family, if constituting murder, assassination, or poisoning, is not regarded as a political crime, but will be treated as an act connected with such crime.

The act being liable to punishment, according to Austrian law, extradition will not be granted if said punishment, according to Austrian law, has become barred by statutory limitation, or if reasons exist for exemption from punishment.

Although paragraph 39 of the criminal law expressly provides that extradition is to be made to the state in which the crime was committed, and that to this state the preference is undoubtedly to be given, yet constant practice and common consent permit the surrender to be made also to another state, provided the latter be competent to prosecute, according to the general conditions of competency, and especially to that state of which the fugitive is subject.

Paragraph 59 of the code of criminal procedure provides that the foreign authorities, who demand the extradition, shall

immediately or within proper time, produce such evidence as the accused at the time of his arrest could not overcome.

As regards the question: "Is reciprocity required, or is the matter in the absolute discretion of the government?" it must be observed that reciprocity in the granting of extradition is always expected; that several instances are known where, in case of doubt, inquiry was first made before it was granted, and that the imperial royal ministry of justice holds that in the absence of reciprocity, surrender is not to be granted on the ground of general international principles.

The fourth and last question is: "How is the question of extradition finally decided, and in what form is notice of the decision given to the demanding government?"

The first part of the question is fully answered in paragraph 59 of the code of criminal procedure, the provisions of which must be consulted.

The second part of the question can only be answered by saying that no certain rules exist, but that in cases where diplomatic requisition is demanded, the ministry of justice communicates through the ministry of foreign affairs with the diplomatic representative of the government which demands extradition, and that in the few rare instances where Austrian courts of justice had to communicate directly with foreign authorities, it was the duty of the court having immediate charge of the extradition case to inform the foreign authority of the decision.

The undersigned avails, etc.,

For the minister of foreign affairs.

M. PASETTI.

BADEN.

Concluded January 30, 1857; Ratifications exchanged at Berlin April 21, 1857; Proclaimed May 19, 1857.

ARTICLE I.

It is agreed that the United States and Baden shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who,

being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

Nothing in this article contained shall be construed to extend to crimes of a political character.

ARTICLE II.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE III.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE IV.

The present convention shall continue in force until the first of January, one thousand eight hundred and sixty; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and sixty.

BAVARIA.

Concluded September 12, 1853; Ratifications exchanged at London, November 1, 1854; Proclaimed, November 18, 1854.

ARTICLE I.

The government of the United States and the Bavarian Government promise and engage, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, to deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other

magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

The stipulations of this convention shall be applied to any other state of the German Confederation which may hereafter declare its accession thereto.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV.

Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

BELGIUM.

Concluded 1882; Proclaimed Nov. 20, 1882.

ARTICLE I.

The government of the United States and the government of Belgium, mutually agree to deliver up persons who, having been charged, as principals or accessories, with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum, or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of this convention, with any of the following crimes:

1. Murder, comprehending the crimes designated in the Belgian penal code, by the terms of parricide, assassination, poisoning and infanticide.

2. The attempt to commit murder.

3. Rape, or attempt to commit rape. Bigamy. Abortion.

4. Arson.

5. Piracy or mutiny on shipboard whenever the crew, or part thereof, shall have taken possession of the vessel by fraud or by violence against the commander.

6. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another, money or goods by violence or putting him in fear; and the corresponding crimes punished by the Belgian laws under the description of thefts committed in an inhabited house by night, and by breaking in by climbing or forcibly, and thefts committed with violence or by means of threats.

magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

The stipulations of this convention shall be applied to any other state of the German Confederation which may hereafter declare its accession thereto.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV.

Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

ARTICLE IV.

The present convention shall continue in force until the first of January, one thousand eight hundred and sixty; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and sixty.

BAVARIA.

Concluded September 12, 1853; Ratifications exchanged at London, November 1, 1854; Proclaimed, November 18, 1854.

ARTICLE I.

The government of the United States and the Bavarian Government promise and engage, upon mutual requisitions by them or their ministers, officers or authorities, respectively made, to deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys, committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other

magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.

The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

The stipulations of this convention shall be applied to any other state of the German Confederation which may hereafter declare its accession thereto.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV.

Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

The present convention shall continue in force until the first of January, one thousand eight hundred and fifty-eight; and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other at any time after the expiration of the said first day of January, one thousand eight hundred and fifty-eight.

BELGIUM.

Concluded 1882; Proclaimed Nov. 20, 1882.

ARTICLE I.

The government of the United States and the government of Belgium, mutually agree to deliver up persons who, having been charged, as principals or accessories, with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum, or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of this convention, with any of the following crimes:

1. Murder, comprehending the crimes designated in the Belgian penal code, by the terms of parricide, assassination, poisoning and infanticide.

2. The attempt to commit murder.

3. Rape, or attempt to commit rape. Bigamy. Abortion.

4. Arson.

5. Piracy or mutiny on shipboard whenever the crew, or part thereof, shall have taken possession of the vessel by fraud or by violence against the commander.

6. The crime of burglary, defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another, money or goods by violence or putting him in fear; and the corresponding crimes punished by the Belgian laws under the description of thefts committed in an inhabited house by night, and by breaking in by climbing or forcibly, and thefts committed with violence or by means of threats.

7. The crime of forgery, by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign or governmental acts.

8. The fabrication or circulation of counterfeit money, either coin or paper, or of counterfeit public bonds, coupons of the public debt, bank notes, obligations, or in general, anything being a title or instrument of credit; the counterfeiting of seals and dies, impressions, stamps and marks of state and public administrations, and the utterance thereof.

9. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries.

10. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed.

11. Willful and unlawful destruction or obstruction of railroads which endangers human life.

12. Reception of articles obtained by means of one of the crimes or offenses provided for by the present convention.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated when such attempt is punishable by the laws of both contracting parties.

ARTICLE III.

A person surrendered under this convention, shall not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offense, not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and, if he shall have been tried and condemned to punishment, he shall be allowed one month after having suffered his penalty or having been pardoned.

He shall, moreover, not be tried or punished for any crime or offense, provided for by this convention, committed previous to his extradition, other than that which gave rise to the extradition, without the consent of the government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in article 7 of this convention.

The consent of that government shall likewise be required for the extradition of the accused to a third country; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV.

The provisions of this convention shall not be applicable to persons guilty of any political crime or offense or of one connected with such a crime or offense. A person who has been surrendered on account of one of the common crimes or offenses mentioned in Article II., shall consequently in no case be prosecuted and punished in the state to which his extradition has been granted on account of a political crime or offense committed by him previously to his extradition or on account of an act connected with such a political crime or offense, unless he has been at liberty to leave the country for one month after having been tried and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government, or against that of any member of his family when such attempt comprises the act either of murder or assassination, or of poisoning, shall not be considered a political offense or an act connected with such an offense.

ARTICLE V.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE VI.

If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for the commission of offenses in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE VII.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers.

If the person whose extradition may be asked for shall have been convicted of a crime or offense, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Belgium, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid.

The president of the United States, or the proper executive authority in Belgium, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VIII.

The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ARTICLE IX.

Extradition shall not be granted, in pursuance of the provisions of this convention, if legal proceedings or the enforcement of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed.

ARTICLE X.

All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

The rights of third parties to the articles so found shall nevertheless be respected.

ARTICLE XI.

The present convention shall take effect thirty days after the exchange of ratifications.

After it shall have taken effect, the convention of March 19, 1874, shall cease to be in force and shall be superseded by the present convention which shall continue to have binding force for six months after a desire for its termination shall have been expressed in due form by one of the two governments to the other.

BELGIUM.

From Belgium two reports have been received. The first dated January 25, 1889, is from Mr. Parkhurst. It encloses a translation of a note from the Prince de Chimay, minister for foreign affairs, of January 19, 1889, which is as follows:

MR. MINISTER: By letter of the 3d of this month, your excellency kindly proposed to me different questions concerning the practice of extradition in Belgium. I have the honor to respond to your excellency in the order that the questions have been proposed.

1. The Belgian government does not authorize extradition except in virtue of treaties concluded by application of the law of the 15th March, 1874; reciprocity is a legal condition, and its own citizens can never be surrendered.

2. Provisional arrest and detention are made pending the reception of an explicit requisition for surrender on the conditions in the concluded treaties.

As a principle, requisitions must contain the declarations required by the treaty governing the case. The detention can

be maintained during 15 days if the arrest has been demanded by a country bordering on Belgium, during three weeks if the country does not border on Belgium, during three months if the applying country is out of Europe.

Besides this, regard must be had to the conventional provisions, which, however, may not be contrary to the law.

Provisional arrest can be obtained upon telegraphic information. Although most of the conventions require that telegraphic information should be transmitted through the diplomatic channels, *as a matter of fact*, the judicial authorities sometimes deviate from the rigor of these principles.

3. The warrant for provisional arrest (article 5 of the law of 15 March, 1874) is issued by the magistrate of the place of residence of the individual whose surrender is demanded, or of the place where he may be found. The warrant for arrest, delivered by the demanding party, accompanying the request for extradition, is made executory by the chamber of council of the tribunal of first instance. (Art. 3, Sec. 2.)

A complaint lodged by an individual against a foreigner, fugitive in Belgium, can not have the effect of his extradition to the government to which he belongs.

When arrest has been made, the demand for extradition is expected, subject to the delays heretofore indicated.

4. The diplomatic and consular agents have to transmit the demands for extradition to the ministry of foreign affairs, which, on its part, communicates the same immediately to the minister of justice. In what concerns the other points, I take leave to call the attention of your excellency to article 3, sections 3, 4, 5, and 6 of the law of 15 March, 1874.

The opinion expressed by the chamber of prosecution does not conclusively bind the government, which, in spite of this opinion, may authorize the surrender.

5. The signature of the foreign authority, which has made authentic the papers transmitted in support of the demand for extradition, must also have been authenticated by the representative of the foreign country in Belgium.

6. The final decision on the matter of extradition is taken by the minister of justice and communicated to the foreign agent by the minister of foreign affairs.

7. This question is legally resolved by articles 5 and 6 of the law, and, for the most part, conventionally.

8. The individual whose extradition has been granted, is delivered to the foreign agents at the extreme frontier.

In what concerns the delay under which the fugitive must be taken out of the country, this is regulated by the conventional dispositions. The extradition is made as soon as possible.

9. The matter of transit is regulated by article 4 of the law of 15 March, 1874.

Most of the treaties concluded by Belgium, contain an analogous disposition. The individual conducted across the country is escorted by the Belgian authorities. Transit is altogether subordinated to the following conditions:

1st. That a native is not in question.

2nd. That prescription does not exist.

3rd. That the charged offenses are not of a political character.

4th. That the requesting government should produce a document that can serve to base an ordinary extradition.

10. Belgium bears the expense occasioned by the arrest, the detention, and the carrying to the frontier of the individuals whose surrender is demanded.

The transit expenses of those conducted across the Belgian territory are charged to the state which has demanded the transit.

In obedience to the desire expressed by your excellency, I have the honor to transmit under this cover, three copies of a pamphlet containing all the legal dispositions relative to extradition and to matters referring to the same, also the treaties concluded by Belgium. Your excellency will find also under this cover, the other treaties concluded since the publication of the pamphlet in question.

Please accept, etc.,

LE PRINCE DE CHIMAY.

[Inclosure.—Translation.]

Ministry of justice.—Extradition law.

Leopold II, King of the Belgians, to all to whom these presents shall come, greeting:

The chambers have adopted and we sanction the following:

ARTICLE 1. The government may deliver up to the governments of foreign countries, on condition of reciprocity, any foreigner who is under prosecution or accusation, or who has been sentenced by the courts of said countries as principal or accessory, for one of the acts hereinafter enumerated committed within their territory:

1st. For assassination, poisoning, parricide, infanticide, murder, violation of the person.

2d. For arson.

3d. For counterfeiting of public bills or bank-notes, of public or private bonds; issuing or placing in circulation of such counterfeit bills, notes or bonds; forgery in documents or in telegraphic dispatches, and use of such counterfeit dispatches, bills, notes, or bonds.

4th. For false coinage, including the counterfeiting and alteration of coins, the issuing and placing in circulation of counterfeit or altered coin, and also frauds in the choice of samples for the verification of the title and weight of coins.

5th. For false testimony, and false declarations of experts or interpreters.

6th. For theft, swindling, peculation, or embezzlement committed by public functionaries.

7th. For fraudulent bankruptcy, and frauds committed in failures.

8th. For association of evil-doers.

9th. For threats to commit such acts of violence against the person or property as subject their perpetrator to the penalty of death, compulsory labor, or reclusion.

10th. For abortion.

11th. For bigamy.

12th. For attempts against individual liberty and the inviolability of the domicil, committed by private persons.

13th. For kidnapping, concealment, withholding, or substitution of an infant.

14th. For exposure or abandonment of an infant.

15th. For kidnapping of minors.

16th. For attempt against chastity, with violence.

17th. For an attempt against chastity, committed without violence, on the person or by the aid of the person of a child of either sex less than fourteen years of age.

18th. For an offense against good morals by exciting, facilitating, or favoring habitually, in order to gratify the passions of others, lewdness or corruption in minors of either sex.

19th. For blows given or wounds inflicted voluntarily, with premeditation, or having caused an apparently incurable malady, permanent incapacity for personal labor, loss of the full use of an organ, a severe mutilation, or death, although caused unintentionally.

20th. For breach of trust and deception.

21st. For subornation of witnesses, experts or interpreters.

22d. For false swearing.

23d. For counterfeiting of seals, stamps, punches, and marks, use of counterfeit seals, stamps, punches, and marks, and unlawful use of genuine seals, stamps, punches, and marks.

24th. For bribery of public functionaries.

25th. For destruction of buildings, steam engines, or telegraphic apparatus, destruction or defacing of tombstones, monuments, objects of art, documents or other papers, destruction or injury of wares, merchandise or other movable property, and opposition to the execution of public works.

26th. For destruction and devastation of harvests, plants, trees, or grafts.

27th. For destruction of agricultural instruments, destruction or poisoning of cattle or other animals.

28th. For abandonment by a captain, except in the cases provided for by law, of a merchant or fishing vessel.

29th. For running aground, loss, or destruction by the captain or the officers and crew; unlawful appropriation, by the captain of a ship or of a merchant or fishing vessel; throwing overboard or unnecessary destruction of the whole or any part of the cargo, of the stores or appurtenances of the vessel; steering a false course; unnecessary borrowing and pledging as security the vessel itself, or the stores or fixtures thereof, the mortgage or sale of

goods or stores, or entry in the accounts of fictitious damages or expenditures; sale of the vessel without special authorization, except in the case of unseaworthiness; discharge of cargo without previous report, except in the case of imminent peril; theft committed on board; adulteration of stores or goods committed on board by the admixture of deleterious substances; attack upon, or forcible and violent resistance to, the captain by more than one-third of the crew; refusal to obey the orders of the captain or officer in command, for the safety of the vessel or cargo, with blows and wounds; plotting against the safety, the liberty or the authority of the captain; seizure of the vessel by the seamen or passengers by fraud or violence toward the captain.

30th. For receiving and concealment of goods obtained by means of any of the crimes or offenses provided for by this law.

The attempt, when punishable according to the penal laws, is included in the foregoing.

ART. 2. Nevertheless, when the crime or the offense giving rise to the demand for extradition shall have been committed outside of the territory of the party making the demand, the government may surrender, on condition of reciprocity, a foreigner who is under prosecution or sentence, in cases in which the Belgian law authorizes prosecution for the same offenses committed outside of the kingdom.

ART. 3. Extradition shall be granted on the production of the original or of an authenticated copy of the sentence or writ of condemnation, or of the order of the council chamber, of the order of the chamber of indictments, or of the writ of criminal procedure, issued by a competent judge, formally decreeing the transfer of the accused to repressive jurisdiction.

It shall likewise be granted on the production of the warrant of arrest, or of any other instrument having the same force, issued by the competent authority in a foreign country, provided such instruments contain a precise statement of the offense for which they were issued, and that they be rendered executory by the council chamber of the court of first instance of the foreigner's place of residence in Belgium, or of the place where he may have been found.

As soon as a foreigner shall have been imprisoned, according to one of the above mentioned instruments, of the nature of

which he shall be duly informed, the government shall receive the opinion of the chamber of indictments of the court of appeals in whose jurisdiction the foreigner shall have been arrested.

The hearing shall be public, unless the foreigner shall request that it may be conducted with closed doors.

The public ministry and the foreigner shall be heard. The latter may enjoy the benefit of counsel.

Within a fortnight after the reception of the documents they shall be referred, with an opinion for which the grounds shall be stated, to the minister of justice.

ART. 4. Extradition by way of transit across Belgian territory may, nevertheless, be granted without having received the opinion of the chamber of indictments, on the simple production of the original or of an authenticated copy of one of the instruments of procedure mentioned in the foregoing article, when it shall have been requested for a state with which Belgium has a treaty comprising the offense which gives rise to the demand for extradition, and when it shall not be interdicted by article 6 of the law of October 1, 1833, and article 7 of this law.

ART. 5. In an urgent case, a foreigner may be arrested, provisionally, in Belgium for any of the offenses mentioned in article 1, on the exhibition of a warrant of arrest issued by the examining magistrate of his place of residence or of the place where he may be found, and based upon an official notice given to the Belgian authorities by the authorities of the country in which the foreigner shall have been sentenced or prosecuted.

Nevertheless, in such a case, he shall be set at liberty if, within fifteen days from the time of his arrest, when such arrest shall have been made at the request of the government of a country bordering on Belgium, and within three weeks, if at the request of the government of a distant country, no communication is received of the warrant of arrest issued by the competent foreign authorities.

This delay may be extended to three months if the country making the demand for extradition is not in Europe.

After the order of arrest the examining magistrate is authorized to proceed according to the rules prescribed by articles 87 to 90 of the code of criminal examination.

A foreigner may claim provisional liberty in cases in which a

Belgian would enjoy such liberty, and on the same conditions. The request shall be submitted to the council chamber.

The council chamber shall likewise decide, after having heard the foreigner, whether it is or is not proper to transmit, either in whole or in part, the papers and other objects seized, to the government making the demand for extradition. It shall order the restoration of the papers and other objects having no direct connection with the offense with which the accused is charged, and, the case arising, shall decide upon the claims of third parties appearing as claimants.

ART. 6. Treaties concluded in virtue of this law, shall be published in the Moniteur; they cannot be put into execution until after the expiration of ten days from the date of that journal.

ART. 7. Extradition can not be granted, if, since the commission of the act with which the prisoner stands charged, or since his prosecution or sentence, such a length of time has elapsed that the term of his liability to punishment has, according to the laws of Belgium, expired by limitation.

ART. 8. Articles 2 and 3 of the law of December 30, 1836, concerning the repression of crimes and offenses committed by Belgians in foreign countries, are applicable to the offenses provided for by article 1 of this law.

ART. 9. They are likewise applicable to infractions in rural matters and in matters of forestry and fishing.

ART. 10. A foreigner who, after having committed, outside of the territory of the kingdom, one of the offenses provided for by article 1 of the law of December 30, 1836, and by articles 1 and 9 of this law, shall acquire or recover the character of a Belgian subject, may, if he be in Belgium, be prosecuted, tried, and punished there according to the laws of the kingdom, within the limits fixed by the said law of December 30, 1836.

ART. 11. Letters rogatory, issued by the competent authorities of a foreign country, and requesting either a domiciliary visit or the seizure of the *corpus delicti*, or of objects which will establish the guilt of the accused, can only be executed in Belgium for one of the acts enumerated in article 1 of this law.

Except in the case provided for by article 5, such letters shall first be rendered executory by the council chamber of the tri-

bunal of first instance of the place where the search and seizure are to be made.

The council chamber shall likewise decide whether it is proper to transmit, in whole or in part, the papers and other articles seized to the government making the demand.

It shall order the restoration of the papers or other articles having no direct connection with the offense with which the accused stands charged, and shall decide the case arising upon the claim of any third parties who may appear as claimants.

ART. 12. The law of April 5, 1868, that of June 1, 1870, together with all the provisions of the law of October 1, 1833, with the exception of article 6, are hereby repealed.

The words "according to the laws of April 5, 1868, and of June 1, 1870," shall be stricken out of article 1 of the law of July 17, 1871, in relation to foreigners.

We promulgate this law, and order that the seal of the state be affixed to it, and that it be published in the Moniteur.

Done at Brussels, March 15, 1874.

LEOPOLD.

By the king:

T. DE LANTSHEERE,
Minister of Justice.

Sealed with the seal of the state.

T. DE LANTSHEERE,
Minister of Justice.

The second report, dated July 13, 1889, from Mr. Terrell, contains the following enclosure:

[Translation.]

Law making modifications in the law of extradition.

Leopold II, King of the Belgians, to all present and to come, greeting:

The chambers have adopted and we sanction the following:

ART. I. The section 2 of article 5 of the law of the 15th of March, 1874, is modified as follows:

"However, in that case, he" (referring to the party arrested) "will be set at liberty if, within the delay of three weeks dating from his arrest, he does not receive communication of the warrant of arrest delivered by the competent foreign authority."

ART. II. The following provision will be inserted after article 5 of the aforesaid law, and will form article 5 *bis*:

"When the foreigner reclaimed is found on a Belgian vessel which has left the territorial waters, the investigating judge of the district to which the port of departure belongs may issue the provisional warrant of arrest provided for by section 1 of the preceding article, and take, with the authorization of the minister of justice, the necessary steps in order that the existence of the warrant may be brought to the knowledge of the captain, either directly or by means of a consul."

"After receipt of this notice the individual reclaimed will remain under arrest on board until the return of the vessel or until the meeting with another Belgian vessel, which will take him on the same conditions, without prejudice of the power inscribed in article 47 of the law of June 21, 1849.

"Mention will be made of all this on the log book on board" (ship's journal).

"The delay prescribed by section 2 of article 5 aforesaid will take date, in that case, at the moment that the foreigner shall have been imprisoned in one of the state prisons."

We promulgate the present law and order that the seal of state be affixed, and that it will be published by the Moniteur.

Given at Laeken, June 28, 1889.

LEOPOLD.

By the King:
The minister of justice,

JULES LE JEUNE.

Sealed with the seal of state.
The minister of justice,

JULES LE JEUNE.

On March 22, 1874, the minister of the United States at Brussels transmitted to the department a report[1] on the law of March 15, 1874, by the Belgian commission charged with the examination of the question of extradition. This report is as follows:

[1] Printed in Foreign Relations, 1874, pp. 56–63.

EXTRADITION.

Report made on behalf of the Central Section,[1] *by M. Wouters.*

[Session of February 26, 1874.]

[Translation.]

GENTLEMEN: Legislation with regard to extradition, after aving long constituted an exceptional branch, entered some ears since into the domain of common law.

The onward march of civilization, the wonderful inventions modern times, and the modifications which have almost everyhere been introduced in penal procedure, are the principal auses to which this state of things is to be attributed.

As nations have extended and multiplied their relations, they ave realized the necessity of mutually aiding each other in the epression of offenses against the laws of universal morality and ustice.

Belgium has not remained behind in this movement.

The law of 1833 was only of a provisional character, and required numerous improvements. These were made in 1868. We will briefly state what they were:

The number of acts rendering their perpetrator liable to extradition, which were only a few offenses of exceptional gravity, as been extended to all offenses in common law which are rovided for and made punishable by the penal laws of civilized ations.

To the sentence of condemnation and the order of the amber of indictments the law of 1868 assimilated the writ of ansfer from the council chamber and the instrument of criminal procedure issued by a competent judge, decreeing formally, causing, with full authority, the transfer of the party accused a court of repressive jurisdiction.

The above was not the only modification made in the law.

According to the law of 1833, when the transit of a criminal rough Belgium was asked for by a government having an extradition treaty with our country, such passage could only be ranted by an observance of all the formalities required for ex-

[1] The central section, presided over by M. Schollaert, was composed of Messrs. Santkin, Lefebvre, Van Iseghem, Pety de Thozée, Wouters and Debuyck.

tradition itself. The bill passed by the chambers in 1868 required only the production of the document serving as the basis of the extradition, without requiring in anything else notice from the chamber of indictments.

A no less important provision was introduced by article 4, which, in order to secure the prompt and efficient repression of crimes and offenses, permits the provisional arrest of a foreigner, in an urgent case, on the exhibition of a warrant of arrest issued by the examining magistrate of the place of his residence, or of the place where he may be found, based upon official notice given to the Belgian authorities by the authorities of the territory in which the crime or the offense shall have been committed.

The law of 1868, moreover, rendered applicable to the offenses provided for in the first article, articles 2 and 3 of the law of December 30, 1836, concerning the repression of crimes and offenses committed by Belgians in other countries, and the law of July 7, 1865, concerning foreigners.

Finally, it provided for the publicity of hearings before the chamber of indictments, and granted to foreigners the privilege of defense by counsel.

This reform which we have thought proper to mention here for the purpose of better fixing the sense of the new provisions, was sanctioned by the almost unanimous vote of the chamber and of the senate, and ratified by the general sentiment of the country.

Several more steps still remain to be taken in this path, and they form the object of the bill submitted to your consideration.

It is to be remarked, this bill leaves previous legislation on the same subject intact in all its essential parts. It merely introduces some improvements the propriety and utility of which have been demonstrated by experience.

EXAMINATION OF THE SECTIONS.

The 1st, 2d, 3d, 4th, and 5th sections voted for the bill unanimously; in the 6th section it was adopted, three members voting for it and two not voting.

In the third section a member asked if No. 3 of the 1st article of the bill included letters of credit and postage-stamps.

The same member requested the government to explain itself

in regard to the generic term *deception*, inserted in No. 20 of article 1st.

In the 6th section, one member, referring to the 3rd article of the bill, pointed out several objections to granting extradition on the production of a warrant of arrest. He thought it preferable to leave the existing legislation on this point unchanged.

EXAMINATION IN THE CENTRAL SECTION.

The general discussion was opened and closed without observation.

In article first the section instructed its reporter to ask the minister of justice for the explanations desired by the third section.

A member desiring to know why No. 12 of article first is only applicable to attempts against individual liberty, committed by private persons, and should not be applied to the same acts committed by agents of the public authorities, the section decided that a question in this sense should be addressed to the government.

In transmitting to him the replies to these various questions, the minister of justice requested the reporter to remark to the central section that they do not relate to the modifications which it is designed to introduce by the bill into the present law.

The minister said that the chamber would doubtless think, as did the government, that it was important to alter the text of the existing law as little as possible, so as to avoid a troublesome perturbation in jurisprudence and in the interpretation of international conventions.

The minister added that he had, to this end, caused the changes which seemed desirable in the law passed six years previously in relation to the matter under discussion to be printed in italic letters in the bill.

The central section shared this view.

It is important to observe, while on this subject, that the list of offenses provided for in article 1 of the law of 1868 receives no additions by the bill under discussion. In including the receiving of stolen goods and assaults and wounds which have caused serious mutilation the bill only makes good an omis-

sion, the cause of which is pointed out in the statement of motives.

It seemed proper expressly to mention complicity and the attempt to commit crime, which, in the practice of courts of appeal, have always been considered as being understood, by implication, in the terms of the law of 1833 and that of 1868, and have been mentioned since the latter date in all treaties made in accordance with that law.

The new article 2, which provides that, when the crime or offense giving rise to a demand for extradition shall have been committed outside of the territory of the party making the demand, the government may deliver up, on condition of reciprocity, a foreigner who is under prosecution, or who has been sentenced, in cases in which the Belgian law authorizes prosecution for the same offenses committed outside of the kingdom, was met with no objection on the part of the central section. That section thought that this provision supplied an important desideratum in the law, and that ample reasons for its existence were given in the statement of motives.

A Belgian might happen to be condemned *in contumaciam* in Belgium for a crime provided for by article 5 of the code of criminal examination, and then might cause scandal by coming to make a parade of his impunity on our frontiers, without fear of being disturbed or delivered up on account of an act committed outside of our territory.

Everybody admits that the law can not tolerate such a thing.

Nevertheless, in order to prevent certain countries from unduly extending their jurisdiction in foreign countries, and thus removing persons whose extradition is desired by them from the jurisdiction of their natural judges, the bill wisely provides that the government shall not surrender, on condition of reciprocity, a foreigner who is under prosecution or who has been sentenced, save in cases in which the Belgian law authorizes prosecution for the same offenses committed outside of the kingdom. By reason of this restriction, which is formally stated in the law, the measure introduced can present no inconvenience.

With regard to article 3, a member made the same observations that were made in the 6th section.

A warrant of arrest seemed to him to be too summary a docu-

ment to authorize extradition. He feared that this mode of proceeding might bring about abuses. It was better, he thought, to continue to require a previous examination in a foreign country.

This opinion was not shared by the section.

The measure whose adoption was proposed by the bill seemed to it to be supported by the strongest grounds.

Let us observe in the first place, that it has been adopted in the treaties of all countries successively, save those which have been concluded by Belgium and the Grand Duchy of Luxemburg, and this constant and almost universal practice has given rise to no inconvenience. It is readily seen that the exceptional position in which we are placed in this respect must be damaging to our relations with foreign governments, since it does not permit us to offer a reciprocity founded upon broader bases, such as is generally admitted in the conclusion of international arrangements in relation to extradition.

Considered in itself, the proposed measure offers very great advantages, which we will succinctly examine.

Its first effect will be to exert a decisive influence upon the speediness of the proceedings.

It must be admitted that a preparatory examination in the absence of the party accused, so that he can not be confronted with his accomplices or with the witnesses, is necessarily incomplete and defective.

Moreover, in this case of an arrest in a foreign country, it being necessary that the decision for the transfer to a competent judge be produced within two months, the examining magistrate must confine himself to an investigation which is too often imperfect and inconclusive as to the facts of the case.

The case runs the risk, therefore, of being delivered over to the hazards of a hearing, without having been either matured or elucidated.

The inconvenience is especially apparent in criminal matters, in which the intervention of the council-chamber is not sufficient, and in which the court must, in its turn, pronounce sentence within the allotted time.

The interest of the accused is here identical with that of the prosecution.

Is it not evident that an examination held in his absence, when he can produce no evidence in his own behalf, must result in an order for the transfer of the accused to a competent court, and that it can have no other effect than to prolong his detention without any benefit to him?

Besides, it frequently happens that the accused asks to be delivered up to justice in his own country without delay, without waiting to go through the formalities of extradition, although he is then obliged to renounce the immunities which are secured to him by law and treaty.

Henceforth this will not be the case; he will be present himself throughout the examination, will choose a defender to aid him in refuting the charges made against him, and that without being deprived of any of the guarantees provided by article 6 of the law of December 1, 1833, which was kept in force by the law of 1868.

Let us not lose sight of the fact that our organic extradition law was enacted that we might conclude treaties with all civilized nations, and not only with countries whose forms of procedure are the same as our own.

In order to obviate the difficulties which might have arisen from the difference in the manner of organization of the repressive tribunals of foreign countries and those of Belgium, the law of 1868 assimilated to the writ of transfer from the council-chamber and to the order of the chamber of indictments the corresponding writ of a foreign criminal court.

It was evidently impossible precisely to define these documents; a rule, which permitted no deviation from it, was that they were to be the last instrument of preparatory procedure transferring the accused to the jurisdiction of his final judges.

But how is it to be determined whether the foreign document possesses this character, and whether no intermediate instrument is to come between the warrant of arrest and the appearance of the accused before the judge who is to punish or acquit him?

What shall we say especially of the English and American warrants? Can we recognize them as really possessing the character which the law requires? What shall we decide as regards the order for *Eröffnung der Untersuchung*, which is a part of the Ger-

man procedure, the *auto de prision* of the Spanish laws, etc.? These documents daily give rise to difficulties to which the measure proposed by the bill would put an end, and which are now the only obstacle to the conclusion of an extradition treaty with the United States, which country has been the place of refuge for the majority of the great criminals who for some years past have escaped from justice in Belgium. The United States have inscribed in their laws the principle of the presence of the accused at every stage of his examination.

The extradition on a warrant of arrest, is moreover, readily reconcilable with the new provisions of the bill for precautionary detention, which has been viewed with such marked favor by public opinion.

It may even be said that it is the corollary and the necessary condition of the passage of this bill.

For if the legislator steps aside in this matter from the rigor of our penal procedure, if he leaves the accused party, who is presumed to be guilty, provisionally at liberty, this is done with the moral certainty that he will appear to answer the charge made against him. If he abuses the confidence of the examining magistrate by crossing the frontier, he must be restored as speedily as possible, to his natural judges, without necessity of having recourse to all the formalities of a preparatory examination, the least inconvenience of which is that it is sometimes accompanied with delays which are incompatible with a proper administration of justice.

It is to be remarked that the new guarantees contained in the bill which was introduced on the 20th of January last are to be applicable to a Belgian surrendered by extradition for trial by the courts of his country.

Thus, immediately after his examination, he may communicate with his counsel. (Art. 3.) Thus also, within five days after his examination, the maintenance of the warrant of arrest will be made subject to confirmation by the council chamber. (Art. 4.)

The case is the same with guarantees provided in the following articles, the benefits of which can not be denied him.

And let it not be said that a warrant of arrest is too summary a document, and that it does not permit the chamber of indict-

ments to base its judgment upon sufficient information. This objection would seem more valid if Belgian judges had to decide concerning the guilt of accused parties whose extradition was demanded by foreign governments. This is no part of their duty; all that they have to do is to examine whether the offense with which the accused is charged in the document produced, be it a warrant of arrest, writ of transfer, indictment, or sentence, is provided for and made punishable by our laws, and whether it is among the offenses enumerated in the extradition treaty.

A warrant of arrest not containing these indications would be irregular, and could not be accepted.

Let us observe, finally, that the introduction of this measure in no wise impairs the guarantees provided by the laws of 1833 and 1868.

Thus the warrant of arrest will first be rendered executory by the council chamber; the session of the chamber of indictments, when the latter is called upon to give its opinion, is to be public, and a foreigner may enjoy the benefit of counsel.

All these guarantees must evidently remove all fear of an arbitrary or exaggerated enforcement of the law.

The provision of article 4 of the bill was adopted by the section without debate.

The framer of the law of 1833 thought little about the transit question, and this is not at all strange; extradition was then considered as a measure of exceptional gravity, principally confined to countries bordering upon each other. Since that time the principle has become general as the relations of nations have become extended, and the number of treaties has been greatly increased.

Of the nineteen conventions which Belgium has with other countries, only four are with countries bordering upon her; in the case of most of the others transit has become a necessity.

It was therefore a necessity that the formalities prescribed by our laws in this matter should be simplified in certain respects.

Transit can not be considered as a real extradition, nor can a foreigner who thus passes through our country by compulsion be compared to one who comes of his own accord to seek an asylum there under the ægis of its laws.

To prevent his passage through our territory would be oppos-

ing a simple measure of execution, without any benefit to the foreigner; it would cause long and costly delays, and would subject our country to inevitable reprisals.

Belgium was therefore deeply interested in the adoption of a mode of procedure which should be free from these difficulties and delays. The law of 1868 provided for such a mode in its third article, and the new bill only supplements that provision.

The proposition to increase from ten to fifteen days the duration of the provisional arrest in the case of a country bordering upon our own, and the authorization to extend this time to three months in the case of countries not in Europe, did not form a subject of discussion in the section; the reasons for this change are given in the statement of motives, and justify it in all points.

A final improvement is introduced in article 12 (new) of the bill. It authorizes compliance with letters rogatory issued by competent authorities in foreign countries, and asking either for a domiciliary visit or the seizure of the *corpus delicti* or documents which can convict the accused, in the case of one of the acts enumerated in the first article of this law.

The need of this improvement had long been felt; the legitimate complaints made in consequence of damage done to commercial and industrial interests rendered it very necessary.

Various requests from our judicial authorities, asking that domiciliary visits and seizures might be made in other countries, have necessarily remained unexecuted, on account of the inability of our government to grant reciprocity when similar requests were addressed to it by those countries.

Our constitution declares that a man's domicil is inviolable, and permits a deviation from this principle only in the cases provided for by the law and in the form which the law establishes.

No. 4 of article 5, of the law of 1868, authorizes, it is true, the examining magistrate to proceed in accordance with the rules prescribed by articles 87 to 90 of the code of criminal examination, but this article is not applicable in the matter in question, in which it is necessary to proceed to the visit and seizure, independently of any demand for extradition.

It was therefore proper to extend the exception somewhat.

Belgium is interested therein in the same way as foreign powers, for it frequently happens that an accused person takes advantage of the time which precedes his arrest and sends his papers and correspondence across the frontier, such papers being all that can establish the evidence of his guilt and render the examination satisfactory.

In reality, the seizure of embezzled articles or of documents which can convict is, as remarked in the statement of motives, but a kind of material extradition, which is based upon the same principles as the surrender of the accused.

But, in the same manner as extradition, the execution of letters rogatory requesting domiciliary visits and seizures must be surrounded by strong guarantees, designed to protect the domiciles of Belgian citizens from indiscreet and unwarranted search.

The first of these guarantees should be to restrict the execution of letters rogatory in such matters to those cases in which the law allows extradition to be granted.

There will then be no danger of search in political matters or in matters in which the press is concerned, nor will there be any in fiscal matters and others not specially provided for.

A second guarantee inserted in the bill is the following: Letters rogatory from a foreign country must be rendered executory by the council chamber of the tribunal of first instance of the place where the search and seizure are to be made.

A doubt arose in the central section in regard to the proper interpretation of No. 5 of article 12.

The following is the reply of the minister of justice to the inquiry addressed to him on this subject:

"The provision of the concluding portion of article 12 (bill) can by no means result in investing the council chamber with the right to decide civil suits in cases in which the ownership of articles is claimed by a third party. The functions of the council chamber are in such cases purely conservative. It being its duty only to order the surrender of the articles seized to the foreign government, it has no other right except to refuse such surrender when third parties holding the articles, or others, such as unpaid hotel-keepers or tradesmen, are interested in having the seized articles prevented from crossing the frontier.

"The action of civil justice naturally remains reserved in this case, as in the one provided for in the 6th paragraph of article 5 of the law of 1868. The mention of the third parties appearing as claimants was only inserted in the bill for the purpose of formally enabling them to oppose, before the council chamber, the sending of the articles to a foreign country."

This letter having been read to the section, a member proposed to extend to the 6th paragraph of article 5 of the bill the provision of the concluding portion of the 12th article. This addition to the text of article 5, being recommended by the same considerations as those just stated, was approved.

The bill was passed by the central section, all the members present voting in its favor.

SCHOLLAERT,
Chairman.

ED. WOUTERS,
Reporter.

APPENDIX.

Questions asked by the central section.—1st. Does No. 3 of article 1 of the bill include letters of credit and postage-stamps?

Replies of the minister of justice.—"1st. Article 1, No. 3 of the bill, reproducing the text of the corresponding provision of the law of April 5, 1868, is applicable, as is that provision, to forgeries committed in *letters of credit*, which is evidently comprised in the terms of articles 196 and 197 of the penal code, which are referred to by No. 3, and which provide for the punishment of the crime of forgery and the use of forgeries which have been committed in *commercial papers or blank checks or in private letters.* (See Parliamentary Documents 1867–'68, Appendix to No. 76.)

"As to the counterfeiting of postage-stamps, it is comprised not only in No. 3 but also in No. 23 of article 1. The text thereof is identical with that of the law of April 5, 1868, which refers to articles 188 and 189 of the penal code, which provide for the punishment of the crime of counterfeiting postage-stamps, and other adhesive stamps, and the use of such counterfeit stamps."

2d. Why does No. 12 of article 1 only apply to attempts against individual liberty committed by private persons, without refer-

ring to the same acts committed by the agents of public authority?

"No. 12 of article 1 confines itself in the new law, as in the law of 1868, to attempts against individual liberty committed by private persons, and provided for by articles 434–442 of the penal code, because the same acts committed by agents of the public authority are included among crimes and offenses against the rights guaranteed by the constitution (Title II, parts 147 and 148 of the penal code), and because crimes of this kind might, under certain circumstances, be of a political character."

3d. What is the precise meaning of the word *deception* in No. 20 of the bill?

"3d. The precise meaning of the word *deception* in No. 20 of the bill is determined by the reference made by the law of 1868, same number, to articles 498–501 of the penal code. This word, therefore, includes deception practiced in regard to the identity, nature, origin, and quantity of things sold, as well as the adulteration of articles of food."

Amendment made by the central section:

Art. 5, *at the end.* "And shall decide the case arising upon the claims of third parties appearing as claimants."

DOMINICAN REPUBLIC.

Concluded February 8, 1867; Ratification exchanged at Santo Domingo October 5, 1867; Proclaimed October 24, 1867.

ARTICLE XXVII.

The United States of America and Dominican Republic, on requisitions made in their name through the medium of their respective diplomatic and consular agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party shall seek asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial,

if the crime had been committed in the country where the persons so accused shall be found; in all of which the tribunals of said country shall proceed and decide according to their own laws.

ARTICLE XXVIII.

Persons shall be delivered up according to the provisions of this convention, who shall be charged with any of the following crimes, to wit: Murder, (including assassination, parricide, infanticide, and poisoning); attempt to commit murder; rape; forgery; the counterfeiting of money; arson; robbery with violence, intimidation, or forcible entry of an inhabited house; piracy; embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XXIX.

On the part of each country the surrender shall be made only by the authority of the Executive thereof. The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XXX.

The provisions of the foregoing articles relating to the surrender of fugitive criminals shall not apply to offenses committed before the date hereof, nor to those of a political character.

ECUADOR.

Concluded June 28, 1872; Ratifications exchanged at Quito November 12, 1873; Proclaimed December 24, 1873.

ARTICLE I.

The government of the United States, and the government of Ecuador mutually agree to deliver up such persons as may have been convicted of, or may be accused of the crimes set forth in the following article, committed within the jurisdiction of one of the contracting parties, and who may have sought refuge, or

be found within the territory of the other: it being understood that this is only to be done when the criminality shall be proved in such manner that according to the laws of the country, where the fugitive or accused may be found such persons might be lawfully arrested and tried, had the crime been committed within its jurisdiction.

ARTICLE II.

Persons convicted of or accused of any of the following crimes shall be delivered up, in accordance with the provisions of this treaty.

1st. Murder, including assassination, parricide, infanticide and poisoning.

2nd. The crime of rape, arson, piracy, and mutiny on shipboard when the crew or a part thereof, by fraud or violence against the commanding officer have taken possession of the vessel.

3rd. The crime of burglary, this being understood as the act of breaking or forcing an entrance into another's house with intent to commit any crime, and the crime of robbery, this being defined as the act of taking from the person of another, goods or money with criminal intent, using violence or intimidations.

4th. The crime of forgery: which is understood to be the wilful use or circulation of forged papers or public documents.

5th. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank bills and securities, and in general of any kind of titles to or instruments of credit, the counterfeiting of stamps, dies, seals and marks of the state, and of the administrative authorities, and the sale or circulation thereof.

6th. Embezzlement of public property, committed within the jurisdiction of either party by public officers or depositaries.

ARTICLE III.

The stipulations of this treaty shall not be applicable to crimes or offenses of a political character; and the person or persons delivered up charged with the crimes specified in the foregoing article shall not be prosecuted for any crime committed previously to that for which his or their extradition may be asked.

ARTICLE IV.

If the person whose extradition may have been applied for in accordance with the stipulations of the present treaty, shall have been arrested for offenses committed in the country where he has sought refuge, or if he shall have been sentenced therefor, his extradition may be deferred until his acquittal, or the expiration of the term for which he shall have been sentenced.

ARTICLE V.

Requisitions for the extradition of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in case of the absence of these from the country or its capital, they may be made by superior consular officers. If the person whose extradition is asked for shall have been convicted of a crime, the requisition must be accompanied by a copy of the sentence of the court that has convicted him, authenticated under its seal, and an attestation of the official character of the judge who has signed it, made by the proper executive authority; also by an authentication of the latter by the minister or consul of the United States or Ecuador respectively. On the contrary however, when the fugitive is merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime has been committed, and of any evidence in writing upon which such warrant may have been issued, must accompany the aforesaid requisition. The president of the United States or the proper executive authority of Ecuador, may then order the arrest of the fugitive, in order that he may be brought before the judicial authority, which is competent to examine the question of extradition.

If, then, according to the evidence and the law, it be decided that the extradition is due in conformity with this treaty, the fugitive shall be delivered up, according to the forms prescribed in such cases.

ARTICLE VI.

The expenses of the arrest, detention and transportation of persons claimed, shall be paid by the government in whose name the requisition shall have been made.

ARTICLE VII.

This treaty shall continue in force for ten years from the day of the exchange of ratifications, but in case neither party shall have given to the other one year's previous notice of its intention to terminate the same, then this treaty shall continue in force for ten years longer, and so on.

FRANCE.

Concluded November 9, 1843; Ratifications exchanged at Washington, April 12, 1844; Proclaimed April 13, 1844.

ARTICLE I.

It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in the next following article, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II.

Persons shall be so delivered up who shall be charged, according to the provisions of this convention, with any of the following crimes, to wit: Murder, (comprehending the crimes designated in the French penal code by the terms, assassination, parricide, infanticide and poisoning,) or with an attempt to commit murder, or with rape, or with forgery, or with arson, or with embezzlement by public officers, when the same is punishable with infamous punishment.

ARTICLE III.

On the part of the French government, the surrender shall be made only by authority of the keeper of the seals, minister

of justice; and on the part of the government of the United States, the surrender shall be made only by authority of the executive thereof.

ARTICLE IV.

The expenses of any detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the government in whose name the requisition shall have been made.

ARTICLE V.

The provisions of the present convention shall not be applied in any manner to the crimes enumerated in the second article, committed anterior to the date thereof, nor to any crime or offense of a purely political character.

ARTICLE VI.

This convention shall continue in force until it shall be abrogated by the contracting parties, or one of them; but it shall not be abrogated, except by mutual consent, unless the party desiring to abrogate it shall give six months' previous notice of his intention to do so. It shall be ratified, and the ratifications shall be exchanged within the space of six months, or earlier if possible.

ADDITIONAL ARTICLE TO THE TREATY OF NOVEMBER 9, 1843.

Concluded February 24, 1845; Ratifications exchanged at Paris, June 21, 1845; Proclaimed July 24, 1845.

The crime of robbery, defining the same to be the felonious and forcible taking from the person of another, of goods or money to any value, by violence or putting him in fear; and the crime of burglary, defining the same to be breaking and entering by night into a mansion-house of another, with intent to commit felony; and the corresponding crimes included under the French law in the words *vol qualifié crime*, not being embraced in the second article of the convention of extradition concluded between the United States of America and France, on the ninth of November, 1843, it is agreed by the present article, between the high contracting parties, that persons

charged with those crimes shall be respectively delivered up, in conformity with the first article of the said convention; and the present article, when ratified by the parties, shall constitute a part of the said convention, and shall have the same force as if it had been originally inserted in the same.

AN ADDITIONAL ARTICLE TO THE CONVENTIONS OF NOVEMBER 9, 1843, AND FEBRUARY 24, 1845.

Concluded February 10, 1858; Ratifications exchanged at Washington February 12, 1859; Proclaimed February 14, 1859.

It is agreed between the high contracting parties that the provisions of the treaties for the mutual extradition of criminals between the United States of America and France, of November 9th, 1843, and February 24th, 1845, and now in force between the two governments, shall extend not only to persons charged with the crimes therein mentioned, but also to persons charged with the following crimes, whether as principals, accessories, or accomplices, namely: forging or knowingly passing or putting in circulation counterfeit coin or bank notes or other paper current as money, with intent to defraud any person or persons; embezzlement by any person or persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

FRANCE.

January 14, 1889, Mr. McLane made the following report:

SIR.—In reply to your circular of November 26th, 1888, instructing me to make a report on the subject of extradition, as practiced by the government to which I am accredited, and suggesting certain inquiries for my guidance, I have the honor to send herewith:

1st. A report showing the different stages through which a requisition for the surrender of a fugitive criminal passes in France. This report was prepared by Mr. Vignaud, but I have revised it with him and adopted it as my own.

2nd. A letter from Mr. Edmond Kelly, a competent American lawyer, who acts occasionally as counsel of this legation

with reference to the defects existing in our extradition treaty with France. This letter was written some time ago, when the subject of extradition was being discussed in this legation in connection with the case of Edmund Yard, with which the department is familiar, and in which Mr. Kelly was employed for the prosecution.

I have, etc.,

ROBERT M. MCLANE.

[Inclosure 1.]

Extradition as practiced in France.

As now understood and practiced in France, international extradition is not difficult. The following sketch will show the different stages through which an extradition proceeding passes:

General conditions.—The French government extradites and applies for extradition in the absence of any treaty. When there is no treaty it asks for reciprocity and expects it, but the matter is entirely within its discretion. When there is a treaty it does not consider itself as obliged to refuse extradition for offenses not mentioned in that treaty.

Who may be surrendered.—It surrenders foreigners only. When the fugitive belongs to a country which is not the one applying for the extradition the diplomatic representative of that country is informed of the application, and asked if he has any objections to the extradition. This is a matter of comity; the French government is not bound to refuse the extradition if it is objected to, its object being simply to enable the representative of a foreign power to extend protection to his countrymen. To communications of this kind this legation usually replies that it has received no instruction to oppose the extradition. When the fugitive applies himself to the legation one of the gentlemen acting as our counsel is requested to examine the case, and if it is found that there is occasion for interfering we intervene. I have done so, however, only once.

The French government does not surrender its citizens; its reasons are that the French tribunals are the natural judges of a Frenchman, and that all Frenchmen can be prosecuted and tried in France for offenses committed abroad.

Application for the extradition of a fugitive.—Application

for the extradition of a fugitive from justice who has taken refuge in France must be made in all cases through the diplomatic channel. It would not be received from a consular agent. The basis of any application of this kind is the statement that a warrant of arrest has been issued by the lawful authorities of the demanding government, and that the offense charged is one coming under the treaty. The demanding government is also expected to furnish means of establishing the identity of the fugitive. The fact that the requisition is made through the diplomatic channel is considered to be sufficient authentication.

Provisional arrest and detention.—Previous to a formal requisition for the extradition of a fugitive his provisional arrest and detention can be obtained upon the diplomatic application, by stating that the request is made by authority and that the formal requisition is on its way or is being prepared. Action of this kind can be taken simply upon a telegram. Diplomatic intervention is not, however, always necessary. In cases of emergency an unofficial request from the representative of a country with which France has a treaty of extradition, or even from the police of that country to the French police, reaches the same end. The detention of a fugitive thus arrested is not maintained ordinarily more than from fifteen days to three weeks. If the formal requisition arrives after the fugitive is released he can be arrested again.

The requisition at the foreign office.—A formal requisition for the extradition of a fugitive is always addressed to the minister of foreign affairs and is examined by him first. If found irregular, or not in conformity with the treaty or with existing laws, it is returned to the diplomatic agent through which it was received, with the reasons for so doing. If on its face it seems to be regular it is at once transmitted to the department of justice. It never goes to the courts, which have nothing to do with the matter.

Before the department of justice.—The minister of justice examines in his turn the requisition. If he finds it defective he returns it to the foreign office with his objections. If he has no objection to oppose he sends it to the minister of interior, under whose direction the police department is, with a request to have the fugitive arrested. When the proceedings reach this stage,

the minister of interior has no discretion in the matter. He can abstain from arresting a fugitive when he is asked to do so by a foreign minister or the police of another country; he cannot when he receives the requisition through the department of justice. The fugitive is arrested and brought at once before the "procureur" of the republic in the district where the arrest took place.

Before the "procureur."—The procureur, who receives at the same time communication of all the papers concerning the case, proceeds without delay to the interrogation of the fugitive. He is not allowed to enter into the question of the validity of the requisition, his interrogatories having mainly for object to establish the nationality and identity of the accused, to record his protest, if he does protest, and finally to ascertain whether he consents to be surrendered or not. The prisoner is warned that if, by waiving the legal formalities and proceedings of his extradition, he avoids a few weeks of preventive detention, on the other hand he is no longer protected by the treaty under which his extradition is asked, and consequently he can be tried for any offense with which he may be charged. If he refuses to be voluntarily surrendered the proceedings follow their course. If he consents he signs a paper to that effect. It should be noted that this interrogation takes place immediately after the arrest of the fugitive, and that it is only when arrested, by exception, before the formal requisition reaches the authorities of the country of refuge, that he may find an advantage in consenting to be surrendered at once.

Before the attorney general.—In both cases the procureur reports to the attorney general, who reports to the minister of justice.

Again before the minister of justice.—If the fugitive has consented to be surrendered, the minister of justice requests the minister of interior to remand him to the frontier, where he is formally delivered to the agent of the demanding country.

Before the executive.—If the fugitive refuses to be surrendered—the requisition having been found to be correct—a decree issued by the president orders the extradition. This decree mentions the offense or offenses for which the fugitive is extradited, and states that the extradition is granted in compliance

with such and such treaty or in return of a promise of reciprocity, as the case may be.

Before the minister of interior again.—This decree, with all the papers concerning the case, is placed in the hands of the minister of interior, who sends the prisoner, under proper escort, to the frontier, where he is delivered. A copy of the same papers is furnished to the minister for foreign affairs, who notifies the demanding government.

Transit.—The French government grants the right of transit across its territory of criminals surrendered by another government. Usually this favor is obtained through the diplomatic representative of the demanding government, who is expected to state that the criminal extradited is not a Frenchman, and that his crime is not political, but one at common law. The transit is made in the custody of French agents.

Payment of expenses.—The rule adopted between France and nearly all other countries—except the United States—is not to charge any expenses to the demanding government, the country of refuge assuming them all.

The French authorities have complained that the expenses of extradition proceedings of the United States are so heavy that it is only in exceptional cases that they will venture to make a requisition for the surrender of a fugitive.

Property of a fugitive surrendered.—The property or effects of a fugitive whose extradition is applied for are invariably seized upon his arrest, whether the arrest is provisional or not. If, for some cause or other, the extradition is not granted, the property is returned to the owner; if the extradition takes place, it is turned over either to the agent in charge of the fugitive or to the diplomatic representative of the demanding government.

The foregoing sketch shows that if the minister of justice has much to do with all extraditions in France, the courts of justice have not. A fugitive whose extradition is applied for can have counsel, but he derives from him very little assistance. The French government being authorized by law to expel any foreigner without giving any reason for its action, no foreigner can appeal to the courts for protection in such cases. In extradition matters the foreign government with which France has a treaty can complain of the manner in which it is applied: the

fugitive can not. He is entirely in the hands of the government, that may grant his extradition even if not obliged to do so by the treaty.

GREAT BRITAIN.

TREATY TO SETTLE AND DEFINE BOUNDARIES; FOR THE FINAL SUPPRESSION OF THE AFRICAN SLAVE TRADE; AND FOR THE GIVING UP OF CRIMINALS FUGITIVE FROM JUSTICE.

Concluded at Washington August 9, 1842; Ratifications exchanged at London, October 13, 1842; Proclaimed November 10, 1842.

* * * * * * * *

ARTICLE X.

It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectively made, deliver up to justice, all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or the person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed: And the respective judges and other magistrates of the two governments, shall have power, jurisdiction and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge it shall be the duty of the examining judge or magistrate, to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive.—The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and receives the fugitive.

ARTICLE XI.

* * * The tenth article shall continue in force until one or the other of the parties shall signify its wish to terminate it, and no longer.

EXTRADITION TREATY OF 1889.

Proclaimed March 25th, 1890.

ARTICLE I.

The provisions of the said tenth article are hereby made applicable to the following additional crimes:

1. Manslaughter, when voluntary.

2. Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.

3. Embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained.

4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.

5. Perjury, or subornation of perjury.

6. Rape; abduction; child-stealing; kidnapping.

7. Burglary; house-breaking or shop-breaking.

8. Piracy by the law of nations.

9. Revolt, or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.

10. Crimes and offenses against the laws of both countries for the suppression of slavery and slave-trading.

Extradition is also to take place for participation in any of the crimes mentioned in this convention or in the aforesaid tenth article, provided such participation be punishable by the laws of both countries.

ARTICLE II.

A fugitive criminal shall not be surrendered, if the offense in respect of which his surrender is demanded be one of a political

character, or if he proves that the requisition for his surrender has in fact been made with a view to try to punish him for an offense of a political character.

No person surrendered by either of the high contracting parties to the other shall be triable or tried, to be punished for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this article, the decision of the authorities of the government in whose jurisdiction the fugitive shall be at the time shall be final.

ARTICLE III.

No person surrendered by or to either of the high contracting parties shall be triable or be tried for any crime or offense, committed prior to his extradition, other than the offense for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered.

ARTICLE IV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offense charged, or being material as evidence in making proof of the crime or offense, shall so far as practicable, and if the competent authority of the state applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

ARTICLE V.

If the individual claimed by one of the two high contracting parties, in pursuance of the present convention, should also be claimed by one or several other powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to that state whose demand is first received.

The provisions of this article, and also of articles II to IV, inclusive, of the present convention, shall apply to surrender for

offenses specified in the aforesaid tenth article, as well as to surrender for offenses specified in this convention.

ARTICLE VI.

The extradition of fugitives under the provisions of this convention and of the said tenth article shall be carried out in the United States and in Her Majesty's dominions, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering state.

ARTICLE VII.

The provisions of the said tenth article and of this convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

In case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction and of the sentence of the court before which such conviction took place, duly authenticated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers.

ARTICLE VIII.

The present convention shall not apply to any of the crimes herein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the convention shall come into force.

ARTICLE IX.

This convention shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

It shall come into force ten days after its publications, in conformity with the forms prescribed by the laws of the high contracting parties, and shall continue in force until one or the other of the high contracting parties shall signify its wish to terminate it, and no longer.

MEMORANDUM RELATIVE TO THE EXTRADITION OF FUGITIVES FROM THE UNITED STATES IN BRITISH JURISDICTION.

DEPARTMENT OF STATE,
WASHINGTON, May, 1890.

Where application is made for a requisition for the surrender of a fugitive from the justice of the United States in British jurisdiction, it must be made to appear—

1. That one of the offenses enumerated in the treaties between the United States and Great Britain has been committed within the jurisdiction of the United States, or of some one of the states or territories.

2. That the person charged with the offense has sought an asylum or been found within the British dominions.

All applications for requisitions should be addressed to the secretary of state, and forwarded to the department of state, accompanied with the necessary papers, as herein stated, and must furnish the full name of the person proposed for designation by the president to receive the prisoner and convey him to the United States. When the offense is within the jurisdiction of the state courts, the application must come from the governor of the state. When the offense is against the United States, the application must come from the attorney-general or the proper executive department.

It is stipulated in the treaties with Great Britain that extradition shall only be granted on such evidence of criminality as, according to the laws of the place where the fugitive or person charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed.

It is admissible as constituting such evidence to produce a properly certified copy of an indictment found against the fugitive by a grand jury, or of any information made before an examining magistrate, accompanied by one or more depositions setting forth as fully as possible the circumstances of the crime. An indictment alone has been held to be insufficient.

By the fourteenth section of the English extradition act of 1870, "depositions or statements on oath, taken in a foreign state, and copies of such original depositions or statements, and

foreign certificates of, or judicial documents stating the fact of conviction, may, if duly authenticated, be received in evidence of proceedings under this act."

The fifteenth section of the same act provides as follows: "Foreign warrants and depositions or statements on oath, and copies thereof, and certificates of, or judicial documents stating the fact of, a conviction, shall be deemed duly authenticated for the purposes of this act if authenticated in manner provided for the time being by law, or authenticated as follows: (1) If the warrant purports to be signed by a judge, magistrate, or officer of the foreign state where the same was issued; (2) if the depositions or statements or the copies thereof purport to be certified under the hand of a judge, magistrate, or officer of the foreign state where the same were taken to be the original depositions or statements, or to be true copies thereof, as the case may require; and (3) if the certificate of, or judicial documents stating the fact of conviction purports to be certified by a judge, magistrate, or officer of the foreign state where the conviction took place; and if in every case the warrants, depositions, statements, copies, certificates, and judicial documents (as the case may be) are authenticated by the oath of some witness or by being sealed with the official seal of the minister of justice, or some other minister of state; and all courts of justice, justices and magistrates, shall take judicial notice of such official seal, and shall admit the documents so authenticated by it to be received in evidence without further proof."

If the fugitive be charged with the violation of a law of a state or territory, his delivery will be required to be made to the authorities of such state or territory.

If the offense charged be a violation of a law of the United States (such as piracy, murder on board vessels of the United States, or in arsenals, or dock-yards, etc.), the delivery will be required to be made to the officers or authorities of the United States.

Where the requisition is made for an offense against the laws of a state or territory, the expenses attending the apprehension and delivery of the fugitive must be borne by such state or territory. Expenses of extradition are defrayed by the United States only where the offense is against its own laws.

PROVISIONAL ARREST.

Applications, both by telegraph and by letter, are frequently made to this department for its intervention to obtain the arrest and provisional detention of fugitives from justice in England, Scotland, or Ireland in advance of the presentation of the formal proofs upon which a demand for their extradition may be based. In such cases the only manner in which the department can intervene is by informing the minister of the United States in London of the facts and instructing him to take the necessary measures. This the minister does by authorizing some one connected with the legation to make complaint on oath before a magistrate in accordance with the requirements of the British extradition act of 1870. The form of this complaint is hereto annexed as appendix 2. Attention is invited to its provisions, and especially to the statement deponent is required to make that he is informed and believes that a warrant has been issued in the foreign country for the arrest of the accused. This department, when requested to intervene in such a case, should always be enabled to inform the minister that such a warrant has been issued, in order that the complaint before the British magistrate may be made in due form and without delay.

INFORMATION USED IN OBTAINING PROVISIONAL WARRANTS OF ARREST IN THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND.

Metropolitan Police District, To wit. } The INFORMATION OF

of ..... taken on oath this ..... day of ..... in the year of our Lord one thousand eight hundred and ....., at the Bow street police court, in the county of Middlesex, and within the metropolitan police district, before me, the undersigned, one of the magistrates of the police courts of the metropolis, sitting at the police court aforesaid.

WHO SAITH THAT .....

late of ..... is accused (or convicted of) the commission of the crime of ..... within the jurisdiction of ....., and now suspected of being in the United Kingdom. I make this application on behalf of the ..... government.

I produce .....

I am informed and verily believe that a warrant ..... has been issued in ..... for the arrest of the accused; and that the said government will demand h... extradition in due course, and that there are reasonable grounds for supposing the accused may escape during the time necessary to present the diplomatic requisition for h... surrender, and I therefore pray that a provisional warrant may issue under the provisions of 33 and 34 V. c. 52, s. 8.

Sworn before me, the day and year first above mentioned, at the police court aforesaid.

Extradition Forms
L 12.
INFORMATION.

HAWAIIAN ISLANDS.

Concluded December 20, 1849; Ratifications exchanged at Honolulu August 24, 1850; Proclaimed November 9, 1850.

Article XIV.

The contracting parties mutually agree to surrender, upon official requisition to the authorities of each, all persons who, being charged with the crime of murder, piracy, arson, robbery, forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other; provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had there been committed. And the respective judges and other magistrates of the two governments shall have authority, upon complaint made under oath, to issue a warrant for the apprehension of the person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for

the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

HAWAII.

February 20, 1889, Mr. Merrill made the following report:

SIR.—Referring to department circular of November 26, 1888, respecting international extradition, I have the honor to inform you that the subject, so far as it relates to the kingdom of Hawaii, is fully discussed in the case of John W. McCarthy, decided by the supreme court of Hawaii, in February, 1886, and as in that decision all the laws of the kingdom and rules of the government appertaining to the subject of extradition, are quoted and commented on by all the judges, I enclose copies of the same as the best authoritative information for the department in the matter.

The only conventional obligation of the government of Hawaii to extradite is with the United States, and is contained in article XIV of the treaty with the United States, ratified August 19, 1850.

I have, etc.,

GEO. W. MERRILL.

[Inclosure 1—Hawaiian Gazette, Tuesday, February 16, 1886.]

Supreme Court of the Hawaiian Islands.—In the matter of John W. McCarthy. Tuesday, February 9th. Before Judd, C. J., McCully and Preston, JJ.

Opinion of the court by PRESTON, J.:

On the 25th day of January last an information was laid by attorney general before the chief-justice, alleging that John W. McCarthy was guilty of the crime of embezzlement as a public officer (clerk of the supreme court of the state of California), and that the grand jury for the city and county of San Francisco had, on the 15th day of January, found a true bill of indictment in the superior court of the said city and county against the said McCarthy for such crime, and that a warrant had been issued from the said court for the apprehension of the said McCarthy, and that said McCarthy had left San Francisco and was then residing in Honolulu, and that a requisition for the surrender of

the said McCarthy, under the hand of the governor of the state of California and the great seal of the state, had been sent to His Majesty's government, and praying for an order from the chief justice for the arrest of the said McCarthy, in order that he might be delivered to the officer sent to receive him.

The chief justice thereupon caused a warrant to be issued, under which McCarthy was arrested and brought before his honor on the 26th.

The attorney general appeared on behalf of the prosecution.

Mr. Whiting appeared for the prisoner and pleaded to the jurisdiction on the grounds—

1st. That the warrant issued sets forth no crime or accusation of crime.

2nd. That the crime for which extradition is sought is "embezzlement," and that "embezzlement" committed in a foreign country, viz., the United States, is not an offense or crime for which a person can be extradited.

3rd. That the demand for extradition is made through the governor of the state of California, and that there is no authority in law for said governor to make such demand.

4th. That the affidavit and complaint are made by the attorney general of this kingdom, and that the attorney general can not properly or legally make such complaint or be complainant herein.

The chief justice overruled the pleas, and on February 1st the case came up for hearing and evidence was introduced. It consisted of—

1. A request by George Stoneman, governor of the state of California, attested by the secretary of state of California, under the great seal of the state, dated the 16th of January, 1886, to "His Royal Highness the king of the Hawaiian Islands," for the apprehension and delivery to one Joseph Bee, who is duly authorized to receive him, of one John W. McCarthy, who stands charged with the crime of embezzlement committed within the county of San Francisco.

2. Copy of an indictment in the superior court of the city and county of San Francisco, state of California, against the said John W. McCarthy, in which he is accused by the grand jury of the city and county of San Francisco with the crime of

embezzlement, in that he was on or about the 28th day of February, 1885, the duly elected, qualified, and acting clerk of the supreme court of the state of California, and by virtue of his trust as such officer there came into his possession and control ($550) five hundred and fifty dollars of the property of the state of California, and which he, at the city and county of San Francisco, on the 28th of February, 1885, willfully, unlawfully, fraudulently, and feloniously, did appropriate to his own use, contrary to the due and lawful execution of his said trust and contrary to the form, etc., of the statute, etc. This is signed by J. N. E. Wilson, district attorney, endorsed a "true bill" by E. M. Burns, foreman of the grand jury, and certified by Jas. J. Flynn, the clerk of the superior court, as having been presented in open court by the foreman of the grand jury, and filed as a record of said court on the 15th of January, 1886.

3. Copy of a bench-warrant issued on the indictment by order of the court, and attested by Jas. J. Flynn, the clerk, dated the 15th of January, 1886, for the arrest forthwith of said John W. McCarthy.

4. Original affidavit or return of William Broughton, a police officer of the city and county of San Francisco, that he received the annexed warrant for the arrest of John W. McCarthy, and that he made diligent search for him, etc., and avers upon information and belief that he has fled from justice in the state of California, and has taken refuge in the kingdom of Hawaii. This is sworn to before a deputy clerk of the superior court. These three last papers, to wit, the indictment, bench-warrant, and affidavit of William Broughton, are certified to by Jas. J. Flynn, clerk of the said superior court, under the said seal of the said court, as a full and complete exemplification of the papers and proceedings in the case of The People of the State of California *v.* J. W. McCarthy. The genuineness of this certificate and signature is attested by M. A. Edmunds, presiding judge of the superior court of the city and county of San Francisco, and this is in turn certified to and authenticated by Jas. J. Flynn, clerk as aforesaid. The genuineness of the seals and of the signatures of Judge Edmunds and Jas. J. Flynn, the clerk, were proved to the satisfaction of the chief justice by competent evidence. The testimony of Joseph Bee,

a police officer of the city and county of San Francisco, was taken, that he knew the John W. McCarthy, then in court, to be the John W. McCarthy who was in February, 1885, clerk of the supreme court of the state of California, and who is charged in the indictment with embezzlement of public funds. Evidence of the statutes of California as to the constitution and jurisdiction of the superior court of California, the functions of the grand jury, the nature of an indictment found by it, the nature of the crime of embezzlement, etc., was also given.

The chief justice rendered his decision (which is on file) on the 4th of February, and thereupon certified to His Majesty's minister of foreign affairs, that—

"The chief justice now finds that the above-named John W. McCarthy is charged with the crime of embezzlement committed by him as a public officer of the state of California and entrusted with the custody of public funds belonging to said state while such officer;

"That said crime constitutes a felony by the laws of said state of California and is a crime within the meaning of section 449 of the Civil Code of the Hawaiian Islands;

"That the evidence adduced on the hearing aforesaid is sufficient to sustain the charge made against the said John W. McCarthy, and that the said John W. McCarthy is a fugitive from justice."

On receipt of this certificate the minister of foreign affairs issued his warrant for the arrest and surrender of the accused.

The accused having been arrested, he applied to Mr. Justice Preston, in chambers, on the 5th inst., for a writ of *habeas corpus*, which was granted, and on the same day the accused was produced before such justice and his detention justified under the minister's warrant. At the request of the parties the judge discharged the writ *pro forma* in order that an immediate appeal might be taken, and the accused was remanded in custody.

The appeal came on for hearing on the 6th inst., and was argued by Mr. Whiting for the appellant and the attorney general *contra*.

The following points were taken by counsel for the appellant:

"1. That the state of California is not a sovereign power and

therefore this government can not recognize its demand for petitioner's extradition.

2. Our treaty and intercourse is all with the United States and no person can or should be delivered up to the officers of any of its component parts, unless the demand therefor be made by the government of the United States at Washington.

3. The papers upon which the demand is made are in themselves insufficient to warrant a delivery upon a demand from Washington, and *a fortiori* from California, in this, that the paper purporting to be a bench-warrant is not issued under the seal of the superior court of the city and county of San Francisco and is therefore void there and everywhere.

4. That the crime of embezzlement is not one mentioned in the treaty, and even if the demand were made by the government of the United States, this government should not give up petitioner, because the maxim *enumeratio unius est exclusio alterius* applies to a treaty.

5. That there is no evidence to warrant his arrest and delivery under our law.

6. That there is no evidence that he is a fugitive from justice and therefore he should not be delivered up, as only fugitives from justice can be so delivered.

7. That this government can only deliver up petitioner to the properly authorized agent of the United States of America, and Joseph Bee, who is named in the warrant, has no authority whatever from that government.

8. The court on *habeas corpus* enquires into the exercise of executive discretion when the right of personal liberty is involved.

9. This government is not observing a due respect to the United States when it treats one of the states in all respects as though it were a sovereign power.

10. From the warrant of arrest and the affidavit of the attorney general it appears that the crime alleged to have been committed by John W. McCarthy, for which he is sought to be extradited, is that of "embezzlement." That embezzlement, committed in a foreign country, viz., the United States, is not an offense or crime for which John W. McCarthy can be extradited.

11. That the demand for extradition is made through the

governor of the state of California. That there is no authority in law for said governor to make this demand."

The case was elaborately presented by the learned counsel and the following authorities *inter alia* were cited in support of his contentions: Bishop's Cr. L., sec. 23, 196, 25; U. S. *v.* Lancaster, 2 McLean, 431; Cohen *v.* Virginia, 6 Wheat., 264; Spear on Extradition, pp. 5, 116, 117, 196, 383, 51; Opinions of Atty. Genl., vol. 7, p. 6, vol. 6, pp. 91, 85, 431; Holmes *v.* Jennison, 14 Peters, 540; The People ex rel. Barlow *v.* Curtis, 50 N. Y., 321; Respublica *v.* Longchamps, 1 Dall., 120; Re Wong Sow, 3 Haw., 503. A treaty is a supreme law of the land. Foster *v.* Nelson, 2 Pet., 253; Wheat. Int. Law, 93, 94; Short's Case, 10 S. and R., 134; *in re* Washburne, 4 John Ch. R., 106; Remarks of Taney, C. J., Rhode Island *v.* Massachusetts, 14 Peters, 458.

The attorney general contended that the Hawaiian government might under the authority of section 449 of the civil code and by international law, although not bound to do so, surrender the accused, notwithstanding "embezzlement" was not a crime included in the treaty with the United States.

By the Court: The first point we have to consider is, whether the minister of foreign affairs has authority by law to issue his warrant to surrender the petitioner.

It is a disputed question among writers on international law as to how far a sovereign state is *obliged* to deliver up persons charged with the commission of crimes in a foreign country. But it is nowhere held that the government of a sovereign state may not in its discretion deliver up such fugitives from justice on requisition made by a friendly government.

If there be a treaty, of course the contracting states are bound to deliver up persons accused of the commission of crimes mentioned in the treaty, but it does not, in our opinion, follow that states are precluded from surrendering persons accused of other crimes than those specified.

The treaty between this government and the United States was ratified in August, 1850, and by it the contracting powers mutually agreed to surrender upon official requisition to the authorities of each, "all persons who, being charged with the crimes of murder, piracy, arson, robbery, forgery, or the utter-

ance of forged paper, committed within the jurisdiction of either, shall be found within the territories of the other."

In the case of Anson Wing, the opinion of the attorney general (Cushing) was cited by counsel for petitioner. The attorney general says: "It is the settled political doctrine of the United States that, independently of special compact, no state is bound to deliver up fugitives from justice of another state." "It is true, any state may, in its discretion, do this as a matter of international comity toward the foreign state, but all such discretion is of inconvenient exercise in a constitutional republic, organized as is the Federal Union," etc. And similar opinions have been given by other attorney generals of the United States and there is no doubt that the practice of the government of the United States and of Great Britain has in general been in accordance with the policy stated by Mr. Cushing.

But in the case of Arguelles, the government of the United States did seize and surrender to the Spanish government, with which there was no extradition treaty, the person accused of crime. It is true Mr. Spear, p. 16, says it was nothing but legal kidnapping, but the government exercised its discretion.

But the case under consideration stands, as we think, on higher grounds than any previously mentioned.

The legislature of this kingdom, by one of its first laws after the recognition of its independence and sovereign rights, adopted the principle that it is the duty of the state to surrender fugitives from justice. By article IV, section 1, of the second act of Kamehameha the 3rd, "An act to arrange the executive departments of the Hawaiian Islands," it is enacted:

"The governors, upon receiving information from the minister of the interior that any person, any alien, fleeing from the justice of a foreign country on account of crime committed therein, is lurking in their respective islands, evading justice, and that formal demand has been made for his surrender by the representatives of such foreign country, or in case no demand has been made, that a public proclamation has been issued against such fugitive and a reward offered for his apprehension and surrender, shall have power, and it shall be their duty to issue a warrant for his or her apprehension."

By a subsequent part of the same act relating to the office of the minister of foreign relations, it is enacted:

"The minister of foreign relations, upon information in writing from the minister of the interior that an alien fugitive from justice has been arrested within the jurisdiction of this kingdom, and is in custody of the marshal pursuant to section third, article 3, chapter fourth of the first part of this act, shall give immediate notice of such arrest to the accredited representative of the nation to which said fugitive belonged, if there be one near this government; and he shall, through such representative, tender such fugitive to the nation whose subject or citizen he is, claiming at the same time the costs and expenses incurred by his apprehension, removal, confinement and surrender."

The statute also provides that in case the accredited representative shall decline to accept the surrender, the fugitive may be expelled the kingdom, the policy of the government being to deny the right of asylum to criminals.

The civil code was compiled and became law in 1859, and by it the following clauses were substituted for those before set out:

"§ 449. The representative judges and magistrates of the kingdom shall have authority, upon complaint made under oath, to issue a warrant for the apprehension of any person charged with the commission of a crime in any foreign country, that he may be brought before such judges, or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the minister of foreign affairs, that he may issue a warrant for the surrender of such fugitive."

"§ 451. The warrant of the minister of foreign affairs, directing the surrender of any fugitive from justice, shall be binding upon all officers of His Majesty's government, in anywise having the custody of such fugitive.

"§ 452. Every fugitive from justice may be retained in prison after his surrender until a suitable opportunity occurs for his removal at the expense of the officer to whom he is surrendered."

So that it appears to the court there can be no question as to the right of His Majesty's government to surrender a fugitive criminal.

And, indeed, a very distinguished statesman (P. S. Mancini) maintains that "the duty of surrendering such fugitives is founded in natural right as a debt due to justice, and consequently does not depend for its existence either on the fact of a treaty or on the condition of reciprocity." (See American Law Review, November–December, 1885, p. 955.)

The legislature having, according to our view, provided for the surrender of such fugitives, and His Majesty's government having exercised its discretion by the minister of foreign affairs issuing his warrant for the surrender of the petitioner, it is not within our province to review the exercise of such discretion, except so far that we must see there is a proper legal basis to sanction the act of the minister; and this brings us to the consideration of the remainder of the points urged on behalf of the petitioner.

The requisition is made by the governor of the state of California, and it is contended he has no power to make such a requisition by the laws and constitution of the United States.

However this may be, and without binding the court to decide as we now do in any case which may hereafter come before it, we hold in the case now before us that, the minister resident of the United States having requested the intervention of His Majesty's government, the ground taken for the petitioner is not sustainable.

With respect to the points touching the want of evidence to warrant the arrest of the petitioner, we are of opinion that if the petitioner was charged with the crime before a magistrate having power only to commit the accused for trial, and to issue his warrant for the arrest of the accused for examination, the evidence would undoubtedly be insufficient to make even a *prima facie* case, and the petitioner would be entitled to his discharge. But here an indictment has been found by a grand jury, from which we must assume that sufficient evidence was adduced to warrant the placing of the petitioner upon his trial.

Article 7 of our constitution, as to the right of an accused to have witnesses against him produced face to face, only applies

to persons put upon their trial upon indictment before the courts of this kingdom.

It is enough that a reasonable presumption of guilt is apparent, and the production of an indictment found charging the crime is sufficient. (Spear, p. 291.)

With regard to the sufficiency of the bench warrant, we think it would have been more regular to have forwarded the original; but the copy is certified by the proper authority, and it purports to be issued under the seal of the court, and we think that the objections are not well taken.

The only remaining point is whether the petitioner is a fugitive from justice. The petitioner claims that by the law of the state of California (Political Code, § 853) he is entitled to be absent from the state for sixty days, and that consequently he is to be treated, not as a fugitive from justice, but as a person lawfully traveling wherever he may please.

We cannot adopt this view, and we think the authorities of the state of California have repudiated such a construction by taking the measures they have. The affidavit of the officer entrusted with the warrant for the arrest of the petitioner is distinct and specific. He says "sought for him at his last known place of residence and at his place of business in the market place and at the exchange and that he could not find said J. W. McCarthy, and deponent deposes and avers, upon his information and belief, that the said J. W. McCarthy has fled from justice in the state of California and taken refuge in the kingdom of Hawaii." We therefore are of opinion it is sufficiently proven that the petitioner is a fugitive from justice.

We therefore dismiss the petition and remand the petitioner to the custody of the marshal. Costs to be paid by the petitioner.

JUDD, C. J.—In addition to the opinion of the court I wish to say that as the crime charged against the prisoner (embezzlement of public funds in a foreign country) is not one of the crimes for which, by the treaty between the United States and this kingdom, his extradition could be demanded, the procedure to obtain his surrender is not to be governed by the provisions of the treaty. It is quite true that if the surrender of a fugitive should be demanded as of right under the treaty, this govern-

ment would be justified in refusing to comply with it, unless the demand came from the executive representing the sovereignty of the foreign state.

In the case before us the request of the United States minister that the prisoner be surrendered to the agent of the state of California is sufficient. The liberty of residents in this kingdom is fully protected by the statute law, which requires a judicial examination into the proof of criminality against them and a judgment as to its sufficiency as a prerequisite to their being extruded from this kingdom. If it were not for this statute, and a resident of this kingdom was attempted to be sent abroad to be tried for a crime not extraditable under a treaty, the act of the executive in arresting him and holding him for surrender would be without law. In such a case the courts would be authorized to interfere by *habeas corpus*.

The policy of this country, as evidenced by the statute of 1846, which authorized the arrest of an alien fugitive from justice and his tender to the accredited representative of the country to which the fugitive belongs, though no demand for his surrender be made, and the present statute passed in 1859, is certainly against making our shores the asylum for foreign criminals. Many of the dicta quoted from cases in courts of the United States where the policy is said to be against the surrender of fugitives, except under treaty obligations, would have no application here.

McCULLY, J.—The eleven points made by the learned counsel for the petitioner cover everything that can be urged on his behalf. But in my view he seriously misapprehends the status of the case with reference to article XIV of the American treaty, and with reference to treaty stipulations generally.

It is seen by the citations made in the opinion of the court from the organic laws of 1846, the first systematic laws of this kingdom, that a full and liberal provision was made against the contingency that the island kingdom might become a resort for fugitives from justice. Such might be arrested upon merely the formal demand of a resident foreign representative, or further upon the mere knowledge that public proclamation had been issued against a fugitive, and be held in custody of the authorities until surrendered to the representative of the foreign gov-

ernment from whose jurisdiction he had fled. These statutes contain no provisions for judicial examination of the grounds for issuing a warrant. The order proceeds immediately from the executive. Furthermore, so careful was the legislation of that time that persons guilty of crime in other countries should not sojourn here that it is provided that even if the representative of the foreign power refuses to accept the surrender, the offender may be delivered up for transportation to any armed vessel of his nation.

These provisions of law were made prior to any treaty stipulations concerning extradition, although treaties recognizing the sovereignty and civilization of the kingdom had been made with France and Great Britain.

The statutes of 1846 being the law of the kingdom, the treaty with the United States embracing article XIV, providing for extradition, was ratified in August, 1850. There are obvious reasons why the treaty should be narrower in its terms than the Hawaiian statute. It was of reciprocal obligation, binding the United States to restore like offenders upon like terms to the Hawaiian government.

It is a universal rule in extradition treaties to specify the extraditable offenses. What is agreed upon becomes obligatory and the claim is of right, not depending upon international comity nor upon the statutes of the state upon which the demand is made. The United States could have entered into no treaty giving extradition in the broad terms of the Hawaiian statute of 1846, while there were very good reasons of policy for this kingdom to offer the statute to the powers of the world, and there could be no implication that the American treaty curtailed the effect of it by specifying the offenses for which the United States would extradite to Hawaii, and *vice versa*.

In this state of law and treaty the civil code, repealing and superseding the acts of 1846, was passed May, 1859. Section 449 specifies no offenses. "A crime" is the only designation of the subject on which the statute moves. The mode of proceeding only is changed. There is no appearance of modification due to the American treaty which had been in operation nearly ten years. The wise policy of maintaining a statute which would surrender to the justice of foreign powers a wider class of offend-

ers than was stipulated by treaty appears to have still obtained. Enacted after the treaty it is independent of it, and I see no reason to hold that the treaty abridges the law. This view disposes of one series of the petitioner's objections.

As to the form of the demand. Undoubtedly the state of California can not maintain diplomatic relations, with this or any other foreign power, unless, which I am not informed about, she is included among the states which the republic of Mexico by treaty with the United States permits to make extradition demands directly upon her. But here the United States minister adopts and presents this request, which is not a demand—only treaty stipulations are demandable—that this government will put in operation its own statute. In this view it seems to me nothing more is needed. Indeed the statute requires only "complaint made under oath" before any magistrate by whomsoever may be credible and have a proper relation to the case to put it in motion. Query: Why could not officer Bee, without the request of the governor of California, and without the request of the United States minister, have demanded a warrant for the apprehension? These requests, the one and the other, are highly influential, but I do not perceive that they are essential to the operation of the statute. The authority of officer Bee to receive him without special authorization is, however, a different thing from making the complaint.

Now, was the evidence of criminality sufficient to sustain the charge? Doubtless, this court upon review in *habeas corpus* of the sufficiency of evidence, will be held by all the constitutional provisions guaranteeing the rights of personal liberty and of trial upon evidence of witnesses produced face to face, both for the defense and prosecution, which rights belong to all persons being for any time within our jurisdiction.

Without referring to the authorities given in the opinion of the court, I cite only the result expressed in Spear's Law of Extradition, p. 40, in these words: "The general rule of evidence adopted in the extradition treaties of the United States is, that the charge of criminality on which the demand for delivery is based must be supported by such evidence as would justify the apprehension and commitment for trial of the person accused, if the alleged offense had been committed in the country on

which the demand is made." This rule as to treaties may be adopted for action under our statute. We have before us in this case evidence of criminal proceedings commenced in the court of California. An indictment has been found by at least twelve grand jurors acting upon sworn testimony. A bench warrant has issued thereon for his arrest, and the service thereof has been defeated only by the departure of the petitioner from the country. The case has reached the stage of probable cause and apprehension already in California. "Evidence of criminality" required by section 449 can not be taken to mean conviction of guilt. Mr. McCarthy is not to be tried here. He is wanted to be tried in California. The proofs offered here satisfy me that there is no infringement of personal right in rendering him for such trial. On the other hand it would be unreasonable to require more. There is a clear distinction between a mere charge or accusation and a commitment or indictment found. If there were only the first, it would be proper to require here evidence of probable cause on which a commitment for trial might be made. We are certified that this has already been done. If our statute does not apply to this case it is not easy to see what it was intended to accomplish.

Regarding the jurisdiction of the court to inquire into the discretion of the executive in this proceeding it seems to me that when we have determined that the issue of the certificate to the minister of foreign affairs was well based on the statute, we have done all that belongs to us. Upon such certificate given we are not to advise him to issue his warrant, and certainly are not to advise him not to issue it.

HAYTI.

Concluded November 3, 1864; Ratifications exchanged at Washington, May 22, 1865; Proclaimed July 6, 1865.

ARTICLE XXXVIII.

It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who,

being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek an asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons so accused shall be found; in all of which the tribunals of said country shall proceed and decide according to their own laws.

Article XXXIX.

Persons shall be delivered up, according to the provisions of this treaty, who shall be charged with any of the following crimes, to wit: murder, (including assassination, parricide, infanticide, and poisoning,) attempt to commit murder, piracy, rape, forgery, the counterfeiting of money, the utterance of forged paper, arson, robbery, and embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

Article XL.

The surrender shall be made, on the part of each country, only by the authority of the executive thereof. The expenses of the detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

Article XLI.

The provisions of the foregoing articles relating to the extradition of fugitive criminals shall not apply to offenses committed before the date thereof, nor to those of a political character. Neither of the contracting parties shall be bound to deliver up its own citizens under the provisions of this treaty.

ITALY.

Concluded March 23, 1868; Ratifications exchanged at Washington, September 17, 1868; Proclaimed September 30, 1868.

ARTICLE I.

The government of the United States and the government of Italy mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes.

1. Murder, comprehending the crimes designated in the Italian penal code by the terms of parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money, by violence or putting him in fear.

5. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

6. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of any title and instrument of credit whatsoever, the

counterfeiting of seals, dies, stamps, and marks of state and public administrations, and the utterance thereof.

7. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositaries.

8. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE III.

The provisions of this treaty shall not apply to any crime or offense of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV.

If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offenses in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Italy, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, of the depositions upon which such warrant may have been issued, must accompany the requisition

as aforesaid. The president of the United States, or the proper executive authority in Italy, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI.

The expenses of the arrest, detention, and transportation of the persons claimed, shall be paid by the government in whose name the requisition shall have been made.

ARTICLE VII.

This convention shall continue in force during five (5) years from the day of exchange of ratifications; but if neither party shall have given to the other six (6) months' previous notice of its intention to terminate the same, the convention shall remain in force five years longer, and so on.

CONVENTION FOR THE EXTRADITION OF CRIMINALS FUGITIVE FROM JUSTICE, BEING ADDITIONAL ARTICLE TO THE CONVENTION OF MARCH 23, 1868.

Concluded January 21, 1869; Ratifications exchanged at Washington May 7, 1869; Proclaimed May 11, 1869.

It is agreed that the concluding paragraph of the second article of the convention aforesaid shall be so amended as to read as follows:

8. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment according to the laws of the United States, and criminal punishment according to the laws of Italy.

SUPPLEMENTARY CONVENTION TO THE CONVENTION OF MARCH 23, 1868.

Concluded June 11, 1884; Ratifications exchanged at Washington April 24, 1885; Proclaimed April 24, 1885.

ARTICLE I.

The following paragraph is added to the list of crimes on account of which extradition may be granted, as provided in article II of the aforesaid convention of March 23, 1868:

9. Kidnapping of minors or adults, that is to say, the detention of one or more persons for the purpose of extorting money from them, or their families or for any other unlawful purpose.

ARTICLE II.

The following clause shall be inserted after article V of the aforesaid convention of March 23, 1868:

Any competent judicial magistrate of either of the two countries shall be authorized after the exhibition of a certificate signed by the minister of foreign affairs (of Italy) or the secretary of state (of the United States) attesting that a requisition has been made by the government of the other country to secure the preliminary arrest of a person condemned for or charged with having therein committed a crime for which, pursuant to this convention, extradition may be granted, and on complaint duly made under oath by a person cognizant of the fact, or by a diplomatic or consular officer of the demanding government, being duly authorized by the latter, and attesting that the aforesaid crime was thus perpetrated, to issue a warrant for the arrest of the person thus inculpated, to the end that he or she may be brought before the said magistrate, so that the evidence of his or her criminality may be heard and considered; and the person thus accused and imprisoned shall from time to time be remanded to prison until a formal demand for his or her extradition shall be made and supported by evidence as above provided; if, however, the requisition, together with the documents above provided for, shall not be made, as required, by the diplomatic representative of the demanding government, or, in his absence, by a consular officer thereof, within forty days from the date of the arrest of the accused, the prisoner shall be set at liberty.

ARTICLE III.

These supplementary articles shall be considered as an integral part of the aforesaid original extradition convention of March 23, 1868, and together with the additional article of January 21, 1869, as having the same value and force as the convention itself, and as destined to continue and terminate in the same manner.

ITALY.

December 31, 1888, Mr. Stallo made the following report:

SIR—I have the honor to acknowledge the receipt of your circular letter of the 26th of November, 1888, and in answer to the questions therein propounded to me, to report:

1st. That the Italian government does not, as a general rule, extradite fugitives from justice in the absence of a conventional obligation, although the old Piedmontese government has occasionally extradited foreigners who had taken refuge within its territory as a matter of comity. The Italian government does not surrender its own citizens, and in a late case (that of Salvatore Paladini) has refused to surrender an Italian subject, even although in the extradition treaty of March 23, 1868, between Italy and the United States, there is no article expressly excepting the citizens or subjects of either of the contracting states from the operation of the treaty.

2nd. Before the formal requisition for the surrender of a a fugitive from justice, accompanied with the evidences of crime relied upon to obtain extradition, has been received, a provisional arrest and detention of the fugitive may be granted either upon a written or telegraphic communication by the demanding government; but to that end a diplomatic requisition is necessary, which must contain a statement of the facts constituting a case of urgency. The term during which the fugitive can be provisionally detained is not limited by law.

3rd. Warrants of arrest are issued by the executive, that is, in fact, by the department of grace and justice, to which all requisitions are sent by the foreign office. If a warrant for provisional arrest has been issued a new warrant is required after the receipt of the formal requisition. The warrant of arrest is issued upon the strength of the documents evidencing the guilt

of the accused which accompany the requisition, and no complaint before the judicial authorities is required. No arrest can be secured on complaint before judicial authorities without prior application to the executive.

4th. The charge against the fugitive, so far as it is evidenced by the documents accompanying the requisition, is, in the first instance, examined by the department of grace and justice, and thereupon, upon the application of the fugitive or at the instance of the government may be referred to the judicial tribunal of the province in which the arrest has been made. But the action of such tribunal is simply advisory and not binding on the executive. All papers to be presented to the judicial authorities are first submitted to the executive, *i. e.*, to the department of grace and justice, by the foreign office.

5th. Papers upon which the demand for extradition is founded are required to be authenticated by the department of state of the demanding government.

6th. The question of extradition is finally decided by the foreign office upon the advice of the department of grace and justice, and notice of the decision is given to the demanding government through the same channels through which the requisition was transmitted.

7th. Seizure of the property and effects of the fugitive may be secured in an action at law upon the complaint of the demanding government or of the party injured, but such property and effects are not, as a rule, delivered to the demanding government.

8th. The delivery of an extradited fugitive takes place at the frontier with the understanding that the fugitive be taken out of the country as soon as practicable.

9th. The right of transit across the territory of Italy of criminals surrendered by a third state to a foreign government may be conceded by the Italian government as a matter of comity; but owing to the peculiar geographical position of the kingdom of Italy no such concession appears as yet to have been applied for.

10th. The expenses of extradition are to be paid by the demanding government.

In compliance with the instructions of the department, I

send herewith, under separate cover, a duplicate copy of the new penal code of Italy, which is to take effect on the 30th of June, 1889; and also inclose a translation of articles 4 to 8, Book First, Title I, relating to extradition. I have not as yet been able to procure a collection of the treaties relating to extradition between Italy and foreign powers, but will forward the same as soon as it is obtained.

I have the honor, etc.,

J. B. STALLO.

[Inclosure.—Translation.]

Extract from the new penal code approved by the Chamber of Deputies and the Royal Senate of the Kingdom of Italy, promulgated on the 28th of November, and to take effect on the 30th of June, 1889.

BOOK FIRST.—TITLE I.

ART. 4. No one can be punished for crimes committed without the territory of the kingdom except in cases expressly provided for by law.

ART. 5. A citizen or foreigner who, in a foreign territory, commits a crime against the security of the state, or is guilty of counterfeiting the seal of the state or of coin having legal currency within the kingdom, or of evidences of public debt or credit, such crime being punishable by imprisonment for a term exceeding five years, is tried and punished according to law.

He may be tried and punished according to Italian law even although he has already been tried and punished in the country where the crime was committed, but in such case allowance is made for the punishment already incurred.

ART. 6. A citizen who, in other cases than those indicated in the preceding article, commits a crime in a foreign country which, according to the laws of that country, is punishable by imprisonment for a term of not less than three years, is tried whenever found within the kingdom and punished according to the provisions of the more lenient of the laws of the two countries.

If the crime be punishable with imprisonment of less duration, the person committing the crime cannot be proceeded against except on complaint of the party injured or on the request of the foreign government.

* * * * * * * * * *

ART. 7. A foreigner who, in cases other than those indicated in article 5, commits a crime in a foreign country to the injury of an Italian citizen or of the state, which crime, according to the laws of the state where it was committed, is punishable with imprisonment for a term of not less than three years, is tried whenever found within the kingdom, and punished according to the milder law of the two states; and in case the crime is punishable with imprisonment of less duration, the person guilty of it is proceeded against only upon the complaint of the party injured.

A foreigner found within the kingdom may be tried and punished according to the milder law prevailing in either of the countries, for a crime committed abroad to the injury of a foreigner, even if such crime, according to the laws of the state where it was committed, is punishable with imprisonment for not less than three years upon concurrence of the following conditions:

1st. That the crime is one of those covered by the treaty of extradition, or an offense against the law of nations, against a person, against property, against public faith, against good morals or the peace of families, or in the nature of a fraudulent bankruptcy;

2nd. That no extradition has taken place of the party guilty of the crime to the government of the country in which the crime was committed, or to that whereof he is a citizen.

The government may expel the foreigner from the kingdom, in the cases provided by law, without trial or after trial and punishment.

ART. 8. Excepting in the cases provided for by the second paragraph of art. 6 persons charged with crime are not tried:

1st. If according to the law either of Italy or of the country where the crime was committed, the penal action is barred by the statute of limitations;

2nd. If the crime, according to the first paragraph of art. 9, is not such as to justify extradition;

3rd. If the person charged with the crime has been tried and acquitted in the foreign country; or, having been tried and found guilty, has suffered the punishment inflicted upon him; or if the

sentence pronounced against him is barred by the statute of limitations.

* * * * * * *

ART. 9. The extradition of an Italian citizen to a foreign government is forbidden.

The extradition of a foreigner is never allowed for political or similar crimes.

The extradition of a foreigner can not be offered or conceded except by order of the king's government, and after previous judgment of the judicial authority of whose jurisdiction the foreigner is subject.

Nevertheless, whenever a demand of extradition is made, the competent authority may order the provisional arrest of a foreigner.

JAPAN.

Concluded April 29, 1886; Ratifications exchanged at Tokio September 27, 1886; Proclaimed November 3, 1886.

ARTICLE I.

The high contracting parties engage to deliver up to each other, under the circumstances and conditions stated in the present treaty, all persons, who being accused or convicted of one of the crimes or offenses named below in Article II, and committed within the jurisdiction of the one party, shall be found within the jurisdiction of the other party.

ARTICLE II.

1. Murder, and assault with intent to commit murder.

2. Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money; counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit of either of the parties, and the utterance or circulation of the same.

3. Forgery or altering, and uttering what is forged or altered.

4. Embezzlement or criminal malversation of the public funds, committed within the jurisdiction of either party, by public officers or depositaries.

5. Robbery.

6. Burglary, defined to be the breaking and entering by night-time into the house of another person with the intent to commit a felony therein; and the act of breaking and entering the house of another, whether in the day or night-time, with the intent to commit a felony therein.

7. The act of entering, or of breaking and entering, the offices of the government and public authorities, or the offices of banks, banking-houses, savings-banks, trust companies, insurance or other companies, with the intent to commit a felony therein.

8. Perjury, or the subornation of perjury.

9. Rape.

10. Arson.

11. Piracy by the law of nations.

12. Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship bearing the flag of the demanding country.

13. Malicious destruction of, or attempt to destroy, railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

ARTICLE III.

If the person demanded be held for trial in the country on which the demand is made, it shall be optional with the latter to grant extradition or to proceed with the trial: *Provided*, That, unless the trial shall be for the crime for which the fugitive is claimed, the delay shall not prevent ultimate extradition.

ARTICLE IV.

If it be made to appear that extradition is sought with a view to try or punish the person demanded for an offense of a political character, surrender shall not take place; nor shall any person surrendered be tried or punished for any political offense committed previously to his extradition, or for any offense other than that in respect of which the extradition is granted.

ARTICLE V.

The requisition for extradition shall be made through the diplomatic agents of the contracting parties, or, in the event of

the absence of these from the country or its seat of government, by superior consular officers.

If the person whose extradition is requested shall have been convicted of a crime, a copy of the sentence of the court in which he was convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Japan, as the case may be, shall accompany the requisition. When the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country making the demand and of the depositions on which such warrant may have been issued, must accompany the requisition.

The fugitive shall be surrendered only on such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime had been there committed.

ARTICLE VI.

On being informed by telegraph or other written communication through the diplomatic channel, that a lawful warrant has been issued by competent authority upon probable cause for the arrest of a fugitive criminal charged with any of the crimes enumerated in article II of this treaty, and, on being assured from the same source that a request for the surrender of such criminal is about to be made in accordance with the provisions of this treaty, each government will endeavor to procure so far as it lawfully may the provisional arrest of such criminal, and keep him in safe custody for a reasonable time, not exceeding two months, to await the production of the documents upon which the claim of extradition is founded.

ARTICLE VII.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention, but they shall have the power to deliver them up if in their discretion it be deemed proper to do so.

ARTICLE VIII.

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has requested the extradition.

ARTICLE IX.

The present treaty shall come into force sixty days after the exchange of the ratifications thereof. It may be terminated by either of them, but shall remain in force for six months after notice has been given of its termination.

JAPAN.

January 19, 1889, Mr. Hubbard made the following report:

SIR—I have the honor to acknowledge the receipt of your circular instruction, dated November 26, 1888, asking for certain information on the subject of international extradition as practiced by the government to which I am accredited.

I had the honor in my dispatch No. 370, dated August 29, 1887, to enclose to the department the law of Japan on the subject of extradition, and this law, with the treaty of extradition between the United States and Japan, answers all the questions propounded in the circular instruction, except one or two, which have been answered for me by the Japanese foreign office.

Japan has no treaty of extradition with any other country except the United States, and no law on the subject of extradition has been passed since the law referred to above as having been sent to the department of state, and which I have the honor again to enclose for the convenience of the department.

The Japanese government will extradite in the absence of a conventional obligation, on condition of reciprocity, and the matter is in the absolute discretion of the government.

In regard to the questions in section 4 of the circular instruction, I beg to refer the department to sections 15 and 16 of the inclosed law, with the explanation that while the public procurator makes a report to the minister of justice in every case of extradition, the report is not binding on the minister of justice who finally decides the extradition.

The government will deliver up extradited criminals at the frontier, that is, on board ship.

When the right of transit across the territory of Japan is granted for criminals surrendered by a third state to a foreign government, the criminal during such transit is in the custody of Japanese officers.

I have, etc., RICHARD B. HUBBARD.

[Inclosure.—Translation.]

Extradition of criminals regulations.

We hereby give our sanction to the regulations for the extradition of fugitive criminals, and order the same to be promulgated.

[His Imperial Majesty's Sign Manual.]
[Privy Seal.]

Dated the 3rd day of the 8th month of the 20th year of Meiji.

(Countersigned) Count ITO HIROBUMI,
President of the Cabinet.
Count INOUYE KAORU,
Minister for foreign affairs.
Count YAMADA AKIYOSHI.

Imperial ordinance No. 42.

REGULATIONS FOR THE EXTRADITION OF FUGITIVE CRIMINALS.

ART. I. In these regulations the term "treaty power" means a foreign power with which the empire of Japan has or may hereafter have an extradition treaty.

The term "extradition crime" means one of the crimes or offenses mentioned in an extradition treaty with a treaty power. The term "fugitive criminal" means any person not a Japanese subject who is accused or convicted of an extradition crime committed within the jurisdiction of any treaty power, who has taken or is suspected of having taken or being about to take refuge within the jurisdiction of the empire of Japan.

It shall also include Japanese subjects:

1. If the extradition treaty between the empire and the demanding-treaty power provides for the mutual surrender of their respective subjects or citizens.

2. If the extradition treaty makes the surrender of subjects or citizens discretionary, and the demanding-treaty power shall have signified its readiness to reciprocally surrender its subjects or citizens under similar circumstances.

ART. II. Whenever the extradition of a fugitive criminal is requested by a treaty power, and steps are to be taken with a view to his surrender, the provisions of the regulations shall be complied with.

ART. III. A fugitive criminal shall not be surrendered in the following cases:

1. If the offense in respect of which his surrender is requested is of a political character.

2. If he satisfactorily prove that the requisition for his surrender has in fact been made with a view to try or punish him for an offense of a political character.

ART. IV. A fugitive criminal who has been accused of some offense within Japanese jurisdiction, not being the offense for which his surrender is requested, or who is undergoing sentence in Japan, shall not be surrendered until after he has obtained his discharge by expiration of his sentence or otherwise.

ART. V. A fugitive criminal shall be liable to be apprehended and surrendered to a treaty power for an extradition crime committed before the conclusion of the treaty with such power.

ART. VI. A fugitive criminal shall also be liable to be apprehended and surrendered for an extradition crime although the Japanese courts may have concurrent jurisdiction over such crime, if, in the opinion of the minister of justice, the ends of justice will be subserved by such surrender.

ART. VII. All warrants of arrest issued under these regulations shall be enforceable in all parts of the empire.

ART. VIII. If a fugitive criminal is claimed by two or more treaty powers, on account of crimes committed within their jurisdiction, the surrender shall be made according to priority of demand, unless an agreement to the contrary be made between the treaty powers making the requisition.

ART. IX. The minister of justice may, upon the request of the minister for foreign affairs, order one or more head public procurators (*joseki kenji*) to issue a warrant for the provisional

arrest of a fugitive criminal according to Form I, to these regulations annexed.

Such request should only be made by the minister for foreign affairs after he has received information in writing or by telegraph from a treaty power through the proper channel that a warrant has been issued for the arrest of the criminal, and an assurance that his surrender will be requested in due form.

ART. X. When any person has been apprehended under a warrant of provisional arrest he shall be discharged from custody unless a requisition for surrender shall be made within a reasonable time, not exceeding two months. Such discharge shall not, however, prevent the subsequent arrest and surrender of any person so apprehended.

When a requisition for surrender of a person held under a warrant of provisional arrest has been made, a warrant of arrest in accordance with Form II, annexed, shall be issued and the warrant of provisional arrest shall be returned.

ART. XI. Subject to the exception in article IX provided for, no person shall have been arrested with a view to extradition until a requisition shall have been made through the channel named in the treaty under which extradition is claimed, in manner following:

1. In the case of a person accused, the requisition shall be accompanied:

(*a*) By an authenticated copy of the warrant of arrest purporting to have been issued by a duly authorized official of the country in which the acts charged against the accused are alleged to have been committed; and

(*b*) By authenticated copies of the depositions or statements on which such warrant of arrest was issued.

2. In the case of a person convicted, the requisition shall be accompanied by a copy of the sentence of the court in which he was convicted, authenticated under its seal.

ART. XII. Upon receipt of a requisition for surrender, the minister for foreign affairs shall, if the case is one falling under an extradition treaty, transmit the requisition, with its accompanying documents, to the minister of justice.

The minister of justice shall, upon their receipt, and if he considers there be due cause, order the head public procurator

of any place where the fugitive criminal is believed to be, or is expected to come, to issue a warrant for his arrest.

ART. XIII. A head public procurator, upon receipt of the order from the minister of justice, in article XII mentioned, shall issue a warrant of arrest. Such warrant shall be according to Form II, to these regulations annexed.

ART. XIV. When the person claimed shall have been apprehended, whether provisionally or otherwise, he shall be brought before the head public procurator who issued the warrant, or the head public procurator within whose district he has been apprehended.

Such procurator shall immediately inform the minister of justice of such arrest.

The minister of justice shall cause to be forwarded to him so soon as may be practicable, unless the discharge of the person arrested shall have been ordered, a copy of the requisition for surrender and the documents accompanying the original requisition.

ART. XV. In the case of a person accused, the head public procurator before whom he is brought shall take evidence with respect to the identity of the accused and the genuineness and authenticity of the documents accompanying the requisition for surrender; and he may, if he deems such documents insufficient, take additional evidence as to the criminality of the accused. In case of a person convicted, the head public procurator shall limit himself to obtaining evidence of identity and proof of sentence having been passed by a competent court of the treaty power claiming his extradition.

ART. XVI. When the head public procurator has completed his enquiry he shall forward a copy of the same to the minister of justice together with his opinion as to the course that should be pursued. He shall also at the same time return the copy of the requisition for surrender and the documents accompanying it. The minister of justice shall, upon receipt of such report from the head public procurator, either issue a warrant of surrender, according to Form III, to these regulations annexed, or order that the person arrested be discharged.

ART. XVII. No fugitive criminal shall be detained for more

than two months after he shall have been arrested in accordance with a warrant of arrest.

ART. XVIII. The minister of justice shall issue a warrant of surrender only in the following cases:

1. In the case of a person accused of an extradition crime, provided the evidence of criminality appears to him sufficient, according to the law of Japan, to justify his committal for trial if the crime or offense of which he is accused had been committed in Japan.

2. In the case of a person convicted, if he is satisfied that the person has been convicted by a competent court.

ART. XIX. Persons convicted by judgment in default (*in contumaciam*) shall, for the purpose of these regulations, and unless it be otherwise stipulated by the treaty with the treaty power demanding the extradition, be considered as persons accused, and not as persons convicted.

ART. XX. When any person arrested has been discharged, or when a warrant for his surrender has been issued, the minister of justice shall return to the minister of foreign affairs the requisition for surrender and its accompanying documents along with a short statement of the course taken and the reasons therefor.

ART. XXI. No person shall be detained after the issue of a warrant of surrender for more than one month. If he be not conveyed out of the Japanese empire within that time, he shall be discharged from custody, unless good cause be shown to the contrary.

ART. XXII. All articles seized which were in the possession of the person to be surrendered at the time of his apprehension shall, unless for good reason to the contrary, be given up to the person or persons who receive him when the extradition takes place.

ART. XXIII. The minister of justice may, upon request of the minister for foreign affairs, authorize the passage through the territory or the territorial waters of Japan of any person who has been surrendered by one foreign power to another.

Such request should only be made by the minister for foreign affairs, after receiving an application through the proper channel from the government to which the surrendered person is being conveyed, accompanied by a duly authenticated copy of

the warrant of surrender, and in the absence of treaty stipulations on the subject between the empire of Japan and the government making the application, an assurance that, under similar circumstances, said government would reciprocally authorize the conveyance through its territory or territorial waters of persons surrendered by third powers to the empire of Japan.

LUXEMBURG.

Concluded October 29, 1883; Ratifications exchanged at Berlin, July 14, 1884; Proclaimed August 12, 1884.

ARTICLE I.

The government of the United States and the government of Luxemburg mutually agree to deliver up persons who, having been charged as principals or accessories, with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or the person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of or be charged, according to the provisions of the convention, with any of the following crimes:

1°. Murder, comprehending the crimes designated in the penal code of Luxemburg by the terms of parricide, assassination, poisoning and infanticide;

2°. The attempt to commit murder;

3°. Rape, or attempt to commit rape, bigamy, abortion;

4°. Arson;

5°. Piracy or mutiny on shipboard whenever the crew or part thereof shall have taken possession of the vessel by fraud or violence against the commander;

6°. The crime of burglary defined to be the act of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the act of feloniously and forcibly taking from the person of another money or goods by violence or putting him in fear; and the corresponding crimes punished by the laws of Luxemburg under the description of thefts committed in an inhabited house by night and by breaking in, by climbing or forcibly; and thefts committed with violence or by means of threats.

7°. The crime of forgery by which is understood the utterance of forged papers, and also the counterfeiting of public, sovereign or governmental acts;

8°. The fabrication or circulation of counterfeit money, either coin or paper, or of counterfeit public bonds, coupons of the public debt, bank-notes, obligations, or, in general, anything being a title or instrument of credit; the counterfeiting of seals and dies, impressions, stamps, and marks of state and public administrations and the utterance thereof;

9°. The embezzlement of public moneys committed within the jurisdiction of either party by public officers or depositaries;

10°. Embezzlement by any person or persons hired or salaried to the detriment of their employers, when the crime is subject to punishment by the laws of the place where it was committed;

11°. Willful and unlawful destruction or obstruction of railroads which endangers human life;

12°. Reception of articles obtained by means of one of the crimes or offenses provided for by the present convention.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated, when such attempt is punishable by the laws of both contracting parties.

Article III.

A person surrendered under this convention shall not be tried or punished in the country to which his extradition has been granted, nor given up to a third power for a crime or offense not provided for by the present convention and committed previously to his extradition, until he shall have been allowed one month to leave the country after having been discharged; and, if he shall have been tried and condemned to punishment, he shall be allowed

one month after having suffered his penalty or having been pardoned.

He may however be tried or punished for any crime or offense provided for by this convention committed previous to his extradition, other than that which gave rise to the extradition, and notice of the purpose to so try him, with specifications of the offense charged, shall be given to the government which surrendered him, which may, if it think proper, require the production of one of the documents mentioned in article 7 of this convention.

The consent of that government shall be required for the extradition of the accused to a third country; nevertheless such consent shall not be necessary when the accused shall have asked of his own accord to be tried or to undergo his punishment, or when he shall not have left within the space of time above specified the territory of the country to which he has been surrendered.

ARTICLE IV.

The provisions of this convention shall not be applicable to persons guilty of any political crime or offense or of one connected with such a crime or offense. A person who has been surrendered on account of one of the common crimes or offenses mentioned in article 2, shall consequently in no case be prosecuted and punished in the state to which his extradition has been granted on account of a political crime or offense committed by him previously to his extradition or on account of an act connected with such a political crime or offense, unless he has been at liberty to leave the country for one month after having been tried, and, in case of condemnation, for one month after having suffered his punishment or having been pardoned.

An attempt against the life of the head of a foreign government or against that of any member of his family, when such attempt comprises the act either of murder or assassination or of poisoning, shall not be considered a political offense or an act connected with such an offense.

ARTICLE V.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE VI.

If the person whose surrender may be claimed pursuant to the stipulations of the present treaty shall have been arrested for commission of offenses in the country where he sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE VII.

Requisitions for the surrender of fugitives from justice shall always be made through a diplomatic channel.

If the person whose extradition may be asked for shall have been convicted of a crime or offense, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and attestation of the official character of the judge by the proper executive authority; and of the latter by the minister or consul of the United States or by the minister or consul charged with the interests of Luxemburg, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, and the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The president of the United States or the proper authority in Luxemburg may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to the law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VIII.

The expenses of the arrest, detention and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ARTICLE IX.

Extradition shall not be granted in pursuance of the provisions of this convention, if legal proceedings or the enforcement

of the penalty for the act committed by the person claimed, has become barred by limitation, according to the laws of the country to which the requisition is addressed.

ARTICLE X.

All articles found in the possession of the accused party and obtained through the commission of the act with which he is charged, or that may be used as evidence of the crime for which his extradition is demanded, shall be seized if the competent authority shall so order, and shall be surrendered with his person.

The rights of third parties to the articles so found shall nevertheless be respected.

ARTICLE XI.

The present convention shall take effect thirty days after the exchange of ratifications.

It may be terminated by either of the contracting parties, but shall remain in force for six months after notice has been given for its termination.

MEXICO.

Concluded December 11, 1861; Ratifications exchanged at Mexico May 20, 1862; Proclaimed June 20, 1862.

ARTICLE I.

It is agreed that the contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being accused of the crimes enumerated in article third of the present treaty, committed within the jurisdiction of the requiring party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as that the laws of the country in which the fugitive or the person so accused shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

In the case of crimes committed in the frontier states or territories of the two contracting parties, requisitions may be made through their respective diplomatic agents, or through the chief civil authority of said states or territories, or through such chief civil or judicial authority of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier states or territories or when, from any cause, the civil authority of such state or territory shall be suspended, through the chief military officer in command of such state or territory.

ARTICLE III.

Persons shall be so delivered up who shall be charged, according to the provisions of this treaty, with any of the following crimes, whether as principals, accessories, or accomplices, to wit: Murder, (including assassination, parricide, infanticide, and poisoning;) assault with intent to commit murder; mutilation; piracy; arson; rape; kidnapping, defining the same to be the taking and carrying away of a free person by force or deception; forgery, including the forging or making, or knowingly passing or putting in circulation counterfeit coin or bank-notes, or other paper current as money, with intent to defraud any person or persons; the introduction or making of instruments for the fabrication of counterfeit coin or bank-notes, or other paper current as money; embezzlement of public moneys; robbery, defining the same to be the felonious and forcible taking from the person of another of goods or money to any value, by violence or putting him in fear; burglary, defining the same to be breaking and entering into the house of another with intent to commit felony; and the crime of larceny of cattle, or other goods and chattels, of the value of twenty-five dollars or more, when the same is committed within the frontier states or territories of the contracting parties.

ARTICLE IV.

On the part of each country the surrender of fugitives from justice shall be made only by the authority of the executive thereof, except in the case of crimes committed within the limits of the frontier states and territories, in which latter case the sur-

surrender may be made by the chief civil authority thereof, or such chief civil or judicial authorities of the districts or counties bordering on the frontier as may for this purpose be duly authorized by the said chief civil authority of the said frontier states or territories, or if, from any cause, the civil authority of such state or territory shall be suspended, then such surrender may be made by the chief military officer in command of such state or territory.

ARTICLE V.

All expenses whatever of detention and delivery effected in virtue of the preceding provisions shall be borne and defrayed by the government or authority of the frontier state or territory in whose name the requisition shall have been made.

ARTICLE VI.

The provisions of the present treaty shall not be applied in any manner to any crime or offense of a purely political character, nor shall it embrace the return of fugitive slaves, nor the delivery of criminals who, when the offense was committed, shall have been held in the place where the offense was committed in the condition of slaves, the same being expressly forbidden by the constitution of Mexico; nor shall the provisions of the present treaty be applied in any manner to the crimes enumerated the third article committed anterior to the date of the exchange of the ratifications hereof.

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE VII.

This treaty shall continue in force until it shall be abrogated by the contracting parties, or one of them; but it shall not be abrogated except by mutual consent, unless the party desiring to abrogate it shall give twelve months' previous notice.

MEXICO.

The following cases bearing on procedure in Mexico are taken from the records of the department of state:

May 19, 1883, Mr. Morgan, minister of the United States at

the City of Mexico, was instructed by telegraph to ask for the arrest of one Vincent, charged with embezzlement of public moneys in the United States. Mr. Morgan preferred the request. In reply the Mexican minister of foreign affairs said that it would be useless to telegraph an order for Vincent's arrest, since no description of him was furnished nor any information of his whereabouts. He also adverted to the fact that the treaty did not authorize the arrest of a fugitive upon telegraphic request prior to the receipt of the formal requisition. Subsequently a description of Vincent was furnished and on the 2nd of July, 1883, Mr. Morgan telegraphed to the department that on the preceding day the president of Mexico had instructed the governor of Coahuila, where Vincent was supposed to be, to arrest him and to detain him until the extradition papers were presented. On the 5th of April, 1884, Mr. Morgan reported that the president of Mexico had ordered Vincent's surrender.

On the 2nd of July, 1884, Mr. Morgan reported to the department that, pursuant to his telegraphic instructions, he had requested the foreign office to direct the authorities at Monterey, Nueva Leon, to hold one Morrison, charged with forgery at San Antonio, Texas, until the arrival of an application for his extradition, which was then on its way. The minister for foreign affairs replied: "Having yesterday received a cablegram from Señor Romero (Mexican minister at Washington) containing a similar application from the secretary of state at Washington, I immediately telegraphed the governor of Nueva Leon to order Morrison's detention."

On July 12, 1884, Mr. Morgan enclosed a note from Mr. Fernandez, of July 9, saying that the governor of Nueva Leon had ordered Morrison's detention, and he hoped the documents would soon be transmitted. On August 5, 1884, Mr. Morgan reported that an order had been issued for his extradition. Mr. Morgan stated that on July 21 he received a note from the minister for foreign affairs announcing that the governor of Nueva Leon had telegraphed that he would hold Morrison subject to the orders of the department of foreign affairs. This was before the legation had received the papers, which came on July 23.

July 8, 1885, Mr. Jackson, minister of the United States in Mexico, reported making request in accordance with telegraphic

instructions for the arrest of one Hamilton, embezzler of public moneys, supposed to be at Paso del Norte. He assured the Mexican government that the papers, warrant, and requisition would go forward immediately. July 7, Mr. Mariscal, minister for foreign affairs, replied that he had sent the governor of Chihuahua the following telegram:

"The United States minister asks the detention of James A. Hamilton, who must be in Paso del Norte; he offers to furnish proofs which justify extradition.

"Please order immediate imprisonment of Hamilton, consulting American consul as to his identity."

Various requests of the minister of the United States, based on telegraphic instructions, are found for the provisional detention of fugitives, pending the receipt of formal proofs. When such telegraphic instructions afforded information sufficiently definite for the identification and arrest of the accused, appropriate orders have generally been issued.

The regular course of procedure to obtain the extradition of a person in Mexico under the treaty between that country and the United States is to send a formal requisition, accompanied with the requisite evidences of criminality, to the legation in Mexico for presentation to the foreign office. If the evidences be found to be in due form and sufficient, the president orders the extradition. Upon receipt of this order the local authority proceeds to arrest the fugitive and to hand him over to the agent of the United States upon proof of the fugitive's identity. If the fugitive has already been arrested and such proof has been made, he is at once handed over to such agent.

Except in case of offenses committed in frontier states and territories, as to which special provision is made in the treaty between the United States and Mexico, the surrender of a fugitive in the latter country can take place only upon the order of the president of the republic.

Where certain fugitives, charged with forgery in the state of Missouri, fled to Mexico, carrying with them a large part of the proceeds of their crime, and were, upon proper demand and proof, ordered to be surrendered, it was also directed, upon the request of the United States, that "the papers and other effects of the prisoners, which may serve for their conviction of the

crime of forgery of which they are accused," should be delivered to the agent of the United States who was authorized to receive the prisoners. [Mr. Bragg, U. S. Minister, to Department of State, 19 February, 1889, MSS. despatches from Mexico; case of Harrison and Samuels.]

NETHERLANDS.

Concluded June 2, 1887; Ratifications Exchanged May 31, 1889; Proclaimed, June 21, 1889.

ARTICLE I.

The United States of America and his majesty the king of the Netherlands reciprocally engage to deliver up to justice all persons convicted of or charged with any of the crimes or offenses enumerated in the following article, committed within the respective jurisdiction of the United States of America, or of the kingdom of the Netherlands, exclusive of the colonies thereof, such persons being actually within such jurisdiction when the crime or offense was committed, who shall seek an asylum or shall be found within the jurisdiction of the other, exclusive of the colonies of the Netherlands: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had been there committed.

ARTICLE II.

Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes:

1. Murder, including infanticide; manslaughter.
2. Rape, bigamy, abortion.
3. Arson.
4. Mutiny, and rebellion on shipboard by two or more passengers against the authority of the commander of the ship, or

by the crew or part of the crew, against the commander or the ship's officers.

5. Burglary; or the corresponding crime in the Netherlands law under the description of thefts committed in an inhabited house by night, and by breaking in, by climbing, or forcibly.

6. The act of breaking into and entering public offices or the offices of banks, banking-houses, savings-bank, trust-companies, or insurance companies, with intent to commit theft therein; and also the thefts resulting from such act.

7. Robbery; or the corresponding crime punished in the Netherlands law under the description of theft committed with violence or by means of threats.

8. Forgery, or the utterance of forged papers including the forgery or falsification of official acts of the government or public authority or courts of justice affecting the title or claim to money or property.

9. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or coupons thereof, or of bank-notes, or the utterance or circulation of the same, or the counterfeiting, falsifying or altering of the seals of state.

10. Embezzlement by public officers.

11. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when the offense is subject to punishment by imprisonment by the laws of both countries.

12. Destruction or loss of a vessel on the high seas, or within the jurisdiction of the party asking the extradition, caused intentionally.

13. Kidnapping of minors, defined to be the abduction or detention of a minor for any unlawful end.

14. Obtaining by false devices money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when the crimes or offenses are punishable by imprisonment or other corporal punishment by the laws of both countries.

15. Larceny, defined to be the theft of effects, personal property, or money.

16. Willful and unlawful destruction or obstruction of railroads, which endangers human life.

Extradition shall also be granted for complicity in any of the crimes or offenses enumerated in this article, provided that the persons charged with or convicted of such complicity may be punished as accessories with imprisonment of a year or more, by the laws of both countries.

Extradition may also be granted for the attempt to commit any of the crimes above enumerated, when such attempt is punishable with imprisonment of a year or more, by the laws of both contracting parties.

ARTICLE III.

The provisions of this convention shall not apply to any crime or offense of a political character, nor to acts connected with such crimes or offenses; and no person surrendered under the provisions hereof shall in any case be tried or punished for a crime or offense of a political character, nor for any act connected therewith, committed previously to his extradition.

ARTICLE IV.

No person shall be tried or punished, after surrender, for any crime or offense other than that for which he was surrendered, if committed previous to his surrender, unless such crime or offense be one of those enumerated in Article II hereof.

ARTICLE V.

A fugitive criminal shall not be surrendered under the provisions hereof when, by lapse of time, he is exempt from prosecution or punishment for the crime or offense for which the surrender is asked, according to the laws of the country from which the extradition is demanded, or when his extradition is asked for the same crime or offense for which he has been tried, convicted or acquitted in that country, or so long as he is under prosecution for the same.

ARTICLE VI.

If the person whose extradition may be claimed pursuant to the stipulations hereof, be actually under prosecution for a crime or offense in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be

deferred until such proceedings be terminated, and until such criminal shall be set at liberty in due course of law.

ARTICLE VII.

If the person claimed by one of the parties hereto shall also be claimed by one or more powers, pursuant to treaty provisions on account of crimes committed within their jurisdiction, such criminal shall be delivered in preference, in accordance with that demand which is the earliest in date.

ARTICLE VIII.

Neither of the contracting parties shall be bound to deliver up under the stipulations of this convention, its own citizens or subjects.

ARTICLE IX.

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X.

All articles found in the possession of the fugitive criminal at the time of his arrest, which were obtained through the commission of the act of which he is convicted or with which he is charged, or which may be material as evidence in making proof of the crime, shall, so far as practicable according to the laws or practice in the respective countries, be delivered up with his person at the time of surrender. Nevertheless, the rights of third parties, with regard to all such articles, shall be duly respected.

ARTICLE XI.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country, or its seat of government, requisition may be made by consular officers.

When the person whose extradition shall have been asked, shall have been convicted of the crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and accompanied by an attestation of the

official character of the judge by the proper authority, shall be furnished.

If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced, authenticated as above provided, with such other evidence or proof as may be deemed competent in the case.

If, after an examination, it shall be decided, according to the law and evidence, that extradition is due pursuant to this convention, the fugitive shall be surrendered according to the forms of law prescribed in such cases.

ARTICLE XII.

It shall be lawful for any competent judicial authority of the United States of America, upon production of a certificate issued by the secretary of state that request has been made by the government of the Netherlands for the provisional arrest of a person convicted or accused of the commission therein of a crime extraditable under this convention, and upon legal complaint that such crime has been so committed, to issue his warrant for the apprehension of such person. But if the formal requisition for surrender with the documentary proofs hereinbefore prescribed be not made as aforesaid, by the diplomatic agent of the demanding government, or, in his absence, by a consular officer thereof, within forty days from the date of the commitment of the person convicted or accused, the prisoner shall be discharged from custody.

And, it shall be lawful for any competent judicial authority of the Netherlands, upon production of a certificate issued by the minister of foreign affairs that request has been made by the government of the United States for the provisional arrest of a person convicted or accused of the commission therein of a crime extraditable under this convention, to issue his warrant for the apprehension of such person. But if the formal requisition for surrender with the documentary proofs hereinbefore prescribed be not made as aforesaid by the diplomatic agent of the demanding government, or, in his absence, by a consular officer thereof, within forty days from the date of the arrest of

the person convicted or accused, the prisoner shall be discharged from custody.

ARTICLE XIII.

The present convention shall take effect on the twentieth day after its promulgation in the manner prescribed by the laws of the respective countries. On the same day the convention entered into by the two contracting parties on the 22nd day of May, 1880, shall be abrogated and annulled. But the present convention shall be held to apply to crimes enumerated in the former convention and committed prior to its abrogation and annulment. And as to other crimes, the present convention shall not be held to operate retroactively.

After the present convention shall have gone into operation, it shall continue until one of the two parties shall give to the other six months' notice of its desire to terminate it.

This convention shall be ratified, and the ratifications shall be exchanged at Washington or The Hague as soon as possible.

In testimony whereof the respective plenipotentiaries have signed the present convention, in duplicate, and have hereunto affixed their seals.

Done at the city of Washington the second day of June in the year of our Lord, one thousand eight hundred and eighty-seven.

T. F. BAYARD. [Seal.]
W. F. H. VON WECKHERLIN. [Seal.]

NETHERLANDS.

January 5, 1889, Mr. Roosevelt made the following report:

SIR — In compliance with your circular of November 26, 1888, no number, in reference to the extradition of criminals, I have the honor to enclose (1) duplicate copies law of April 6, 1875; (2) duplicate copies article 2d, modifying conditions of extradition to suit penal code; (3) duplicate proposals for treaties; (4) a report from the Netherlands government covering the questions in the circular.

The latter is so full and explicit that I think it fully covers all that the government desires in the matter.

I am, etc., R. B. ROOSEVELT.

[Inclosure 1—Translation.]

Law of April 6, 1875; on extradition (Bulletin of Laws, No. 66.)

ARTICLE I.

Articles 16, 17 and 18 of the law of August 13, 1849 (Bulletin of Laws No. 39), are repealed.

No new treaty concerning the extradition of foreigners can be concluded, nor can the existing treaties on this subject be renewed, except in conformity with the provisions of the present law.

ARTICLE II.

Foreigners can be extradited only for the crimes and offenses hereinafter enumerated committed outside the kingdom:

1. Attempts against the life of the sovereign, or of the members of his family, or of the head of a republic;

2. Murder, assassination, parricide, infanticide, poisoning;

3. Threats, punishable according to the provisions of article 305 of the penal code;

4. Abortion;

5. Intentional wounds or blows, which have occasioned a disease or incapacity for personal labor during more than twenty days, or which have been delivered with malice aforethought;

6. Rape, or any other attempt against chastity, committed with violence;

7. Offenses against the public morals, punishable in accordance with the provisions of article 334 of the penal code;

8. Bigamy;

9. Kidnapping, concealment, suppression of the birth of a child, the substitution or changing of a child;

10. Kidnapping of minors;

11. The counterfeiting, falsifying, debasing, or clipping of coin, or intentional participation in the issuing of counterfeited, falsified, debased, or clipped coin;

12. Counterfeiting or falsifying the seals of state, bank-notes, the public funds, dies, stamps and marks, punishable according to the provisions of articles 139–143 of the penal code; counterfeiting or falsifying paper money and postage stamps;

13. Forgery, punishable according to the provisions of articles 145–148 and 150 and 151 of the penal code;

14. False testimony, subornation of perjury, false swearing;

15. Bribery of public functionaries, punishable in accordance with the provisions of articles 177–179, and 181–183, of the penal code, malversation, fraudulent conversion, or embezzlement committed by public receivers or depositaries;

16. Intentional incendiarism, punishable in accordance with the provisions of articles 434 and 435 of the penal code;

17. Intentional destruction of real property, punishable in accordance with the provisions of article 437 of the penal code;

18. Larceny of personal property, punishable in accordance with the provisions of articles 440 and 442, of the penal code;

19. The illegal and intentional loss, wrecking, destruction of, or injury to ships or other vessels;

20. Mutiny and rebellion of passengers on board of a vessel against the captain, and of the crew against their superior officers;

21. The crime of intentionally endangering a train on a railroad;

22. Robbery;

23. Swindling;

24. Fraudulent use of a signature in blank;

25. Embezzlement or waste, to the injury of the owner, holder, or possessor of goods or valuables which have only been placed on deposit or for hired work;

26. Fraudulent bankruptcy.

Article III.

Extradition shall take place not only for the crime or offense when consummated, but also for the attempt, or the act of complicity, when either is punishable under the provisions of the penal laws of the Netherlands.

Article IV.

Extradition shall not be granted as long as the foreigner is undergoing prosecution in the Netherlands for the crime or offense committed outside of the kingdom, nor if he has been tried in the kingdom for the said crime or offense, and has been condemned, discharged, or acquitted.

ARTICLE V.

Extradition shall not be granted when the prosecution or punishment of the crime or offense is barred by prescription under the laws of the Netherlands, before the arrest of the foreigner in the kingdom, or, if the arrest has not been made, before he has been summoned before the tribunal to be examined.

ARTICLE VI.

If the foreigner is undergoing prosecution in the Netherlands for an offense other than that which has given rise to the request for extradition, this request shall not be granted until after the close of the trial, and, in case of condemnation, until after he has undergone his sentence, or been pardoned.

Nevertheless, the foreigner may be provisionally extradited, to be tried in the foreign state, on condition that he shall be returned to the Netherlands after the close of the proceeding.

ARTICLE VII.

Extradition shall be granted only on condition that the extradited person shall not be prosecuted or punished for any crime or offense whatever committed before his extradition, which is not specified in the treaty, unless he has had, for one month after his extradition, opportunity again to leave the country.

ARTICLE VIII.

Extradition shall be requested through the diplomatic channel.

It shall be granted only in accordance with the judgment of the court of the arrondissement in which the person whose extradition is requested has been arrested or shall be found.

In giving judgment the court shall decide which of the articles seized may be restored to the person whose extradition is requested and which are to be surrendered as evidence for conviction.

ARTICLE IX.

Whilst awaiting the request through the diplomatic channel the foreigner whose extradition may be requested may be provisionally arrested in virtue of an order of an officer of justice or

of one of his deputies upon the request of the foreign authority designated by the treaty as competent to issue a provisional warrant of arrest.

Articles in the possession of the foreigner may be seized.

If the provisional arrest has been made in virtue of an order from a deputy officer of justice the prisoner shall be immediately brought before the officer of justice.

ARTICLE X.

After having heard the prisoner the officer may issue a provisional warrant of arrest in his case, which shall be notified to the prisoner within forty-eight hours.

The officer of justice shall order the immediate discharge of the prisoner, unless he is to be held on another ground, and the restitution of the articles seized, unless there is another ground for retaining them, if the request for extradition is not addressed to him, together with the necessary documents, within the period fixed by the treaty, which can not exceed—

(1) Twenty days, counting from the date of the provisional warrant of arrest, if the arrest has been requested on behalf of an European government;

(2) Three months, counting from the same date, if the request has been made on behalf of a government outside of Europe.

When the request for extradition has been made within this period, proceedings shall be had in conformity with the provisions of Articles XIII to XVIII.

ARTICLE XI.

The request for extradition from the foreign government shall be accompanied by the original, or by an authenticated copy of a sentence of condemnation, or of a bill of indictment or of an order of commitment, together with the warrant of arrest, or of any other document of the same character in use in the foreign state and specified in the treaty.

ARTICLE XII.

Foreigners whose extradition is requested in virtue of a treaty, and whose arrest has not yet been effected, shall be

arrested. The warrant of arrest is to be notified to them within forty-eight hours.

The articles found in their possession may be seized.

The officer of justice of the court of the arrondissement where the arrest has taken place shall be informed of the arrest within twenty-four hours.

ARTICLE XIII.

Within three days after the arrest and, if the latter has not been made, or if it has been made before the request for extradition, within three days after having received the order for it, the officer of justice shall cause the individual whose extradition is requested to be examined by the court, and shall ask the latter to give its opinion on the admissibility of the request for extradition.

ARTICLE XIV.

The person whose extradition is requested shall be examined in open court, unless he shall request a secret session, or unless a secret session shall be ordered by the court, during the whole or part of the hearing, for grave reasons, which shall be noted on the records.

The examination shall take place in presence of the public prosecutor.

The person whose extradition is requested may be assisted by counsel. Any person possessing the qualifications necessary to defend an accused person before the criminal or correctional court shall be admitted as counsel.

ARTICLE XV.

Within fifteen days after the examination, the court shall transmit its opinion, and the judgment spoken of in Article VIII, together with the papers in the case, to our minister of justice.

ARTICLE XVI.

Every person who, having been arrested or his extradition having been demanded, lays claim to the possession of the quality of Dutch nationality, and who alleges that the present law is consequently not applicable to him, may claim this quality

by petition addressed to the high court within the fifteen days following his examination.

The officer of justice shall inform him of this right, as soon as possible after his arrest, and it shall be recalled to him at the time of his examination. He shall, moreover, be informed that he has the right to consult counsel on this point.

The clerk of the high court shall immediately inform our minister of justice of the filing of the petition.

Article XVII.

The high court shall decide after having heard the attorney general. If the high court decides that the petitioner is a Netherlander, it shall at the same time decree his immediate discharge, if he has been arrested, unless he is to be kept under arrest for another reason.

The attorney general of the high court shall immediately inform our minister of justice of the judgment of the court.

If the court decides that the petitioner is a Netherlander the articles seized shall be restored to him, unless they are to be retained on another ground, and the proceedings before the lower court, if they have been commenced without being concluded, shall be discontinued.

Article XVIII.

If, within the period fixed by Article XVI, the decision of the high court has not been sought, or if it has been decided by the court that the person whose extradition is requested is not a Netherlander, the extradition shall be granted or refused by our minister of justice, after having received the opinion of the (lower) court.

If the extradition is refused, the person whose extradition is requested shall be immediately discharged, if he has been arrested, unless he is to be kept under arrest for another reason, and the articles seized shall be restored to him, unless there is another ground for retaining them.

Article XIX.

If the person whose extradition is requested has not been arrested, and if, being duly cited, he has not appeared before the

(lower) court for examination, the periods specified in Articles XV and XVI shall begin to run from the day fixed by the (lower) court for the examination.

Article XX.

The government may authorize the transit through the territory of the Netherlands of a foreigner whose extradition has been granted by a foreign government to another government having a treaty of extradition with the Netherlands, including the offense for which extradition has been granted to the latter state, provided that the transit takes place, so far as the escort is concerned, with the co-operation of the officials of the Netherlands.

Article XXI.

The government may order that the foreigner who is provisionally detained, or who is serving his sentence in the Netherlands, shall be temporarily delivered to a foreign state to appear in court to be heard as a witness in a criminal case.

If the foreigner is serving his sentence in the Netherlands, the continuance of the said sentence shall not be interrupted by this being done.

Article XXII.

The present law regards as a Netherlander any one who is held to be such by the provisions of the civil code.

Persons assimilated to Netherlanders in accordance with the terms of Article VIII of this code shall be considered as foreigners so far as the application of the present law is concerned.

Article XXIII.

All papers and documents drawn up in virtue of the present law shall be exempt from stamping and registration, and shall be furnished without charge.

Article XXIV.

The present law does not apply to the arrest of deserting seamen, to their return to their vessels, and to the measures to be taken to put them in charge of the consuls of their nation.

[Inclosure 2.—Translation.]

Article 2 of the law of April 6, 1875 (Bulletin of Laws, No. 66), regulating the general terms on which extradition treaties may be concluded with foreign powers, as said article has been modified in order to harmonize it with the new penal code.

Foreigners can only be extradited for the acts hereinafter enumerated, committed outside the kingdom:

1. (*a*) Attempt against the life or liberty of the king, the reigning queen, the regent, or other head of a friendly state, or undertaken with the design of rendering them incapable of reigning; (*b*) attempt against the life or liberty of the queen not reigning, of the heir apparent of the throne, or of a member of the sovereign family.

2. Murder or assassination, murder or assassination committed on a child.

3. Threats punishable according to paragraph 2 of article 285 of the penal code.

4. Abortion procured by the woman with child or by others.

5. Ill-treatment causing serious bodily injury or death, ill-treatment committed with premeditation, or serious ill-treatment.

6. Rape, or one of the offenses against morals, punishable according to articles 243 to 247, inclusive, of the penal code.

7. Incitement of minors to debauch, and every act having for its object the favoring of corruption of minors, punishable according to article 250 of the penal code.

8. Bigamy.

9. Abduction, concealment, suppression, substitution, or changing of a child.

10. Abduction of minors.

11. Counterfeiting or altering of coins or paper money, undertaken with the design expressed in article 208 of the penal code, or the putting in circulation of coins or paper money, when done intentionally.

12. Counterfeiting or falsifying stamps and marks, punishable according to articles 216 and 217 of the penal code.

13. Forgery, punishable according to articles 225 to 227, inclusive, of the penal code, as well as the keeping or the introduction from abroad of notes of a bank of circulation established by virtue of legal ordinances, with the intention of put-

ting them in circulation as being neither false nor falsified, when the author knew at the moment when he received them that they were false or falsified.

14. False oath.

15. Corruption of public officials, punishable according to articles 178, 363 and 364 of the penal code; extortion, embezzlement committed by officials or by those who are considered such.

16. Arson, in the cases foreseen in articles 157 and 328 of the penal code.

17. Illegal destruction of a building, committed intentionally, punishable according to article 352 of the penal code, or of a building, or of a structure in the cases foreseen in article 170 of the said code.

18. Acts of violence committed in public, with united forces, against persons or property in the cases foreseen in article 141 of the penal code.

19. The illegal act, committed intentionally, of sinking, wrecking, destroying, rendering unfit for use, or injuring a vessel, in the cases foreseen in article 168 of the penal code.

20. Revolt and insubordination of the passengers on board of a vessel against the captain, and of the crew against their superiors.

21. The act, committed intentionally, of endangering a train on a railroad.

22. Theft.

23. Swindling.

24. Abuse of a blank signature.

25. Embezzlement.

26. Fraudulent bankruptcy.

Articles of the new penal code relating to the law of April 16, 1875, (Bulletin of Laws, No. 66.)

45. The attempt to commit an offense is punishable if the intention of the author has been shown by a beginning of performance, and if the performance has only remained unfinished in consequence of circumstances independent of his will.

The maximum of the principal penalties attached to an offense shall be diminished by one-third for the attempt.

47. Shall be punished as authors of punishable acts—

(1) Those who commit the act, who have it committed, or who assist in committing it;

(2) Those who, by gifts, promises, abuse of authority, violence, threats, or deceit, designedly provoke the act.

With regard to the latter, account is taken only of the acts which they have designedly provoked, as well as of the consequences of said acts.

48. Shall be punished as accomplices in an offense—

(1) Those who intentionally lend their aid to commit the offense;

(2) Those who intentionally procure the opportunity, the means, or the information for committing the offense.

49. For accomplices the maximum of the principal penalties shall be diminished by a third.

In fixing the penalty, account shall be taken only of the acts which the accomplice has facilitated or favored intentionally, as well as of the consequences of said acts.

81. The act of putting a person into a swoon or into a state of unconsciousness is regarded as violence.

84. All persons elected in the elections ordered by virtue of a provision of the law are considered officials.

Umpires are included in the terms "functionaries and judges;" those who exercise administrative jurisdiction, in the term "judges."

All who belong to the armed force are also considered officials.

92. The attempt against the life or the liberty of the king, of the reigning queen, or of the regent, or undertaken with the design of rendering them incapable of reigning, shall be punished with imprisonment for life, or for a period of not more than twenty years.

108. The attempt against the life or liberty of the queen not reigning, of the heir apparent of the throne, or of a member of the sovereign family shall be punished with imprisonment for not more than fifteen years. If the attempt against the life has occasioned death, or has been undertaken with premeditation, the punishment shall be imprisonment for life or for a period of not more than twenty years.

115. The attempt against the life or liberty of a reigning prince, or of another head of a friendly state, shall be punished with imprisonment for not more than fifteen years.

If the attempt against the life has caused death, or has been undertaken with premeditation, the punishment shall be imprisonment for life or for a period of not more than twenty years.

141. Those who, in public, with united forces, commit acts of violence against persons or property, shall be punished with imprisonment for not more than four years and six months.

The criminal shall be punished:

(1) With imprisonment for not more than six years, if he destroys property intentionally, or if the violence committed by him has caused any bodily injury;

(2) With imprisonment for not more than nine years, if said violence has occasioned any serious bodily injury;

(3) With imprisonment for not more than twelve years, if said violence has occasioned death.

Article 81 is not applicable to the cases foreseen by this article.

157. Whoever intentionally sets fire to anything, or causes an explosion or an inundation, shall be punished:

(1) With imprisonment for not more than twelve years, if a common danger for property may result from it.

(2) With imprisonment for not more than fifteen years, if danger of death to others may result from it.

(3) With imprisonment for life, or for a period of not more than twenty years, if danger or death to others may result from it, and if the act has caused the death of any one.

164. Whoever intentionally creates a danger to steam communication on a railroad shall be punished with imprisonment for not more than fifteen years.

If the act has occasioned the death of any one, the criminal shall be punished with imprisonment for life, or for a period of not more than twenty years.

168. Whoever intentionally and illegally sinks or wrecks a vessel, destroys it, renders it unfit for use, or injures it, shall be punished:

(1) With imprisonment for not more than fifteen years, if a danger to others may result from it.

(2) With imprisonment for life, or for a period of not more than twenty years, if a danger to others may result from it, and if the action has occasioned the death of any one.

170. Whoever intentionally destroys or injures any building or structure, shall be punished:

(1) With imprisonment for not more than twelve years, if a common danger to property may result from it;

(2) With imprisonment for not more than fifteen years, if a danger of death to others may result from it;

(3) With imprisonment for life, or for a period of not more than twenty years, if a danger of death to others may result from it, and if the act has occasioned the death of any one.

178. Whoever makes a present or a promise to a judge, with a view to influencing the decision of a cause submitted to the judgment of the latter, shall be punished with imprisonment for not more than six years.

If said gift or promise is made with a view to obtaining a condemnation in a penal cause, the criminal shall be punished with imprisonment for not more than nine years.

Deprivation of the rights mentioned in article 28, Nos. 1 to 4,* may be pronounced.

207. Whoever, in cases in which a provision of the law requires a declaration affirmed under oath, or attaches to said declaration certain legal consequences, intentionally makes a false declaration under oath, verbally or in writing, in person or by a special proxy, shall be punished with imprisonment for not more than six years.

If the false oath has been made in a penal matter to the prejudice of the person accused or suspected the criminal shall be punished with imprisonment for not more than nine years.

The promise or affirmation which, by virtue of the law, is substituted for the oath, is regarded as an oath.

*ART. 28. The rights of which the criminal may be deprived by judicial decision in the cases fixed by law are:

(1) The right to be appointed to public functions, or to certain determined public functions.

(2) The right of serving in the armed force.

(3) The right of electing or of being elected in the elections ordered by virtue of a legal ordinance.

(4) The right to be a judicial counsel or administrator; that of being a guardian, or a substituted guardian, trustee, or substituted trustee of other children than his own.

(5) Paternal authority, the guardianship and trusteeship of his own children.

The deprivation of the rights enumerated in article 28, Nos. 1 to 4, may be pronounced.

208. Whoever counterfeits or alters coins or paper money, with the intention of uttering or causing to be uttered said coins or paper money as not counterfeited and not altered, shall be punished as guilty of counterfeiting, with imprisonment for not more than six years.

209. Whoever intentionally utters, as being neither counterfeited nor altered, coins or paper money, knowing at the moment when he received them that they were counterfeited or altered, or who retains them or introduces them into the kingdom in Europe with the intention of uttering them or causing them to be uttered as being neither counterfeited nor altered, shall be punished with imprisonment for not more than nine years.

212. If one of the offenses mentioned in articles 208 to 211 is committed with regard to foreign coins or foreign paper money, the maximum of the punishment of imprisonment shall be diminished by two years.

213. Whoever intentionally, after learning the counterfeiting or alteration, again puts in circulation counterfeited or altered coins, or counterfeited or altered paper money, shall be punished with imprisonment for not more than three months, or with a fine of not more than three hundred florins.

216. Shall be punished with imprisonment for not more than six years.

(1) Whoever counterfeits or falsifies stamps emitted by the state, with the intention of using them or of causing them to be used by other persons as being neither false nor falsified;

(2) Whoever, with the same intention, manufactures any of said stamps by illegally using genuine punches.

217. Shall be punished with imprisonment for not more than five years:

(1) Whoever affixes false marks for the state, or false workman's marks required by law, to articles of workmanship of gold or silver, or falsifies genuine ones, with the intention of using said articles of workmanship, or of causing them to be used by others, as if the marks affixed to said articles were neither false nor falsified;

(2) Whoever, with the same intention, affixes marks to the articles in question by illegally using genuine punches;

(3) Whoever affixes, fixes, or applies the genuine marks of the state or the genuine workman's marks required by law on gold or silver articles of workmanship other than those on which they are originally placed, with the intention of using said articles, or of causing them to be used by other persons, as if said marks had been placed on them originally.

225. Whoever manufactures falsely or falsifies a writing from which any right, any obligation, or the extinction of a debt may result, or which is intended to serve as proof, with the intention of using it or causing it to be used by others, shall be, if any damage may result from such use, punished as guilty of forgery, with imprisonment for not more than five years.

Shall be punished with the same punishment whoever intentionally makes use of the writing manufactured falsely or falsified as if it was genuine and not falsified, if any damage may result from such use.

226. The person guilty of forgery shall be punished with imprisonment for not more than seven years, if the forgery has been committed:

(1) In authentic documents;

(2) In bonds or certificates of the debt of a state, of a province, of a commune, or of a public establishment;

(3) In shares, or obligations, or certificates of shares, or obligations of any association, foundation, or society;

(4) In schedules, records of dividends or of income, belonging to the documents mentioned in the two preceding numbers or in the instruments issued in place of said documents.

(5) In credit or business paper intended for circulation:

Shall be punished with the same punishment whoever intentionally makes use of one of the false or falsified writings mentioned in the first paragraph, as if it was genuine, and not falsified, if any damage may result from such use.

227. Whoever causes to be inserted in an authentic document a false declaration concerning a fact the truth of which the document is to prove, with the intent to make use of said document or to cause it to be used by other persons, as if the declaration was in conformity with truth, shall be, if any damage may result

from such use, punished with imprisonment for not more than six years.

Shall be punished with the same punishment whoever intentionally makes use of the document, as if the contents were in conformity with the truth, if any damage may result from such use.

232. Whoever retains or introduces into the kingdom in Europe notes of a Netherlands circulating bank founded by virtue of legal provisions, knowing at the moment he received them that they were false or falsified, with the intent to put them or to have them put in circulation as being neither false nor falsified, shall be punished with imprisonment for not more than seven years.

236. Whoever, by any act, intentionally renders uncertain the origin of any other person shall be punished, as guilty of suppression of birth, with imprisonment for not more than five years.

Deprivation of the rights specified in article 28, Nos. 1 to 4 may be pronounced.

237. Shall be punished with imprisonment for not more than four years:

(1) Whoever intentionally contracts a double marriage.

(2) Whoever contracts a marriage knowing that by this marriage the other party contracts a double marriage.

Whoever, when contracting a double marriage, has kept secret from the other party the fact that he was already married shall be punished with imprisonment for not more than six years.

Deprivation of the rights enumerated in article 28, Nos. 1 to 5, may be pronounced.

242. Whoever by violence, or by threats of violence, forces a woman to have, out of wedlock, carnal intercourse with him shall be punished as guilty of rape, with imprisonment for not more than twelve years.

243. Whoever, out of wedlock, has carnal intercourse with a woman, knowing that she is in a swoon or unconscious, shall be punished with imprisonment for not more than eight years.

244. Whoever has carnal intercourse with a girl under the age of twelve years shall be punished with imprisonment for not more than twelve years.

245. Whoever, out of wedlock, has carnal intercourse with a woman who has attained the age of twelve years, but not yet that of sixteen years, shall be punished with imprisonment for not more than eight years.

Except in the cases foreseen in article 248, there is no prosecution except on complaint.

246. Whoever by violence, or threats of violence, forces a person to commit or to undergo acts of immorality shall be punished, as guilty of attempt against modesty, with imprisonment for not more than eight years.

247. Whoever commits acts of immorality with a person, knowing that she is in a swoon or unconscious, or with a person below the age of sixteen years, or incites the latter to commit or to undergo acts of that character, or to have, out of wedlock, carnal intercourse with a third person, shall be punished with imprisonment for not more than six years.

248. If one of the offenses specified in articles 243 and 245 to 247 has occasioned serious bodily injuries, an imprisonment of not more than twelve years shall be inflicted.

If one of the offenses specified in articles 242 to 247 has occasioned death, an imprisonment of not more than fifteen years shall be inflicted.

250. Shall be punished as a procurer:

(1) With imprisonment for not more than four years, the father, the mother, the guardian or the substituted guardian, who intentionally incites or favors the debauch of his minor child, or of the minor placed under his guardianship or substitute guardianship with a third person.

(2) With imprisonment for not more than three years, any other person who, for the sake of gain, intentionally incites or favors the debauch of a minor with a third person, or who makes a business of intentionally inciting or favoring the debauch of a minor with a third person.

279. Whoever intentionally withdraws a minor from the authority to which he is legally subjected, or from the care of one who exercises it by right, shall be punished with imprisonment for not more than six years.

An imprisonment of not more than nine years shall be

inflicted if any deceit, violence, or threats have been employed, or if the minor is under the age of twelve years.

280. Whoever intentionally hides, or withdraws from the researches of the agents of justice or police, a minor who has been withdrawn or who has withdrawn himself from the authority to which he is legally subjected, or from the care of one who exercises it by right, shall be punished with imprisonment for not more than three years, or if the minor is under the age of twelve years, with imprisonment for not more than six years.

281. Shall be punished as guilty of abduction:

(1) With imprisonment for not more than six years whoever carries off a minor woman against the will of her parents or guardians, but with her own consent, with the intent to secure possession of her either by marriage or out of marriage.

There is no prosecution except on complaint.

(2) With imprisonment for not more than nine years, whoever carries off a woman by deceit, violence, or threats with the intention to secure possession of her either by marriage or out of marriage.

Complaint may be brought: (*a*) If the woman is a minor at the time of the abduction, either by herself, or by one of the persons whose consent she ought to have in order to be able to contract marriage; (*b*) if she is of age at the time of the abduction, either by herself or by her husband.

If the abductor has married the person carried off, no condemnation can be pronounced before the nullity of the marriage has been pronounced.

285. The threat of public violence, with united forces, against persons or property, of an offense endangering the general safety of persons or property, of rape, of attempts against modesty, of an offense against life, of serious ill-treatment, or of arson shall be punished with imprisonment for not more than two years.

If such threat is made in writing and under a fixed condition, it shall be punished with imprisonment for not more than four years.

287. Whoever intentionally takes the life of another shall be punished, as guilty of murder, with imprisonment for not more than fifteen years.

289. Whoever intentionally and with premeditation takes the

life of another shall be punished, as guilty of assassination, with imprisonment for life, or for a period of not more than twenty years.

290. A mother who, under the effects of the fear that her confinement will be discovered, intentionally takes the life of her child, at the time of birth or soon afterwards, shall be punished as guilty of infanticide, with imprisonment for not more than six years.

291. A mother who to execute a resolution, made under the effects of the fear that her approaching confinement will be discovered, intentionally takes the life of her child at the moment of birth, or soon afterwards, shall be punished, as guilty of assassination committed on a child, with imprisonment for not more than nine years.

295. A woman who intentionally procures, or causes to be procured by another, the miscarriage or death of her fruit shall be punished with imprisonment for not more than three years.

296. Whoever intentionally procures the miscarriage or the death of the fruit of a woman without her consent shall be punished with imprisonment for not more than twelve years.

If the act has caused the woman's death the criminal shall be punished with imprisonment for not more than fifteen years.

297. Whoever intentionally procures the miscarriage or the death of the fruit of a woman with her consent shall be punished with imprisonment for not more than four years and six months.

298. If a physician, a midwife, or a druggist renders himself an accomplice in the offense specified in article 295 or renders himself guilty or an accomplice of one of the offenses specified in articles 296 and 297, the punishments fixed by said articles may be increased by a third, and the criminal may be deprived of the right to practice the profession in which he has committed the offense.

300. Ill usage shall be punished with imprisonment for not more than two years, or with a fine of not more than three hundred florins.

If the act has occasioned a serious bodily injury, the criminal shall be punished with imprisonment for not more than four years.

If the act has occasioned death the criminal shall be punished with imprisonment for not more than six years.

The act of intentionally injuring health is regarded as ill usage.

The attempt to commit this offense is not punishable.

301. Ill usage committed with premeditation shall be punished with imprisonment for not more than three years.

If the act has caused serious bodily injury the criminal shall be punished with imprisonment for not more than six years.

If the act has caused death the criminal shall be punished with imprisonment for not more than nine years.

302. Whoever intentionally inflicts on another a serious bodily injury shall be punished as guilty of serious ill usage with imprisonment for not more than eight years.

If the act has caused death the criminal shall be punished with imprisonment for not more than ten years.

303. Serious ill usage committed with premeditation shall be punished with imprisonment for not more than twelve years.

If the act has caused death the criminal shall be punished with imprisonment for not more than fifteen years.

310. Whoever abstracts a thing which belongs entirely or in part to another, with the intent to appropriate it illegally to himself, shall be punished as guilty of theft, with imprisonment for not more than four years, or with a fine of not more than sixty florins.

311. Shall be punished with imprisonment for not more than six years:

(1) The stealing of cattle in the fields;

(2) Theft committed on the occasion of a fire, an explosion, an inundation, a wreck, a running aground, a railroad accident, a rebellion, a riot or war troubles;

(3) Theft committed during the time allotted to night repose in a habitation, or in an enclosure containing a habitation, by any one who is there without the knowledge or against the will of the person who has the right to be there;

(4) Theft committed by two or more persons united;

(5) The criminal who, in order to commit the theft, has obtained an access to the place where the offense is committed, or has obtained possession of the thing to be abstracted by means

of effraction, of breaking open, or of escalade, of false keys, of a false order, or of a false dress.

If the theft mentioned in No. 3 is accompanied by one of the circumstances cited in Nos. 4 and 5 an imprisonment of not more than nine years, shall be inflicted.

312. Shall be punished with imprisonment for not more than nine years a theft preceded, accompanied, or followed by violence or threats of violence against persons, made with the intent to prepare or facilitate the theft, or, in the event of being caught in the act, either to render flight possible or to secure to himself or his accomplices in the offense the possession of the thing stolen.

An imprisonment of twelve years shall be inflicted:

(1) If the act has been committed either during the time allotted to night repose in a dwelling, or in an enclosure containing a dwelling, or on the public way, or in a railway train while it is in motion;

(2) If the act has been committed by two or more persons united;

(3) If the criminal has obtained access to the place where the offense is committed by means of effraction or escalade, false keys, a forged order, or a false dress;

(4) If the act has occasioned a serious bodily injury.

An imprisonment of not more than fifteen years shall be inflicted if the act has occasioned death.

316. If the author or accomplice of one of the offenses specified in this section is inseparably united in person or property with the person to whose prejudice the offense has been committed, there is no prosecution against the author nor the accomplice.

If he is his separable associate in person or property, or his relative or kinsman, either by direct descent or to the second degree in the collateral line, there is no prosecution against him, except on the complaint of the person to whose prejudice the offense has been committed.

321. Whoever illegally appropriates an article belonging wholly or partly to another, or of which he is the holder otherwise than in consequence of an offense, shall be punished as guilty of embezzlement, with imprisonment for not more than three years or with a fine of not more than sixty florins.

322. Embezzlement committed by a person who is the holder of the thing through his personal service, or his profession, or for a salary in money, shall be punished with imprisonment for not more than four years.

323. Embezzlement committed by a person to whom the thing has been entrusted as a necessary deposit, by either guardians, trustees, administrators, testamentary executors or directors of beneficent institutions or of establishments, with regard to a thing which they hold in such capacity, shall be punished with imprisonment for not more than five years.

324. The provisions of article 316 apply to the offenses specified in this section.

326. Shall be punished as guilty of swindling, with imprisonment for not more than three years, whoever, with the intent to procure an illegal profit for himself or for a third person shall have induced anyone to surrender a thing, or to contract an obligation, or to extinguish a debt, either by taking a false name or a false character, or by fraudulent intrigues, or by a combination of falsehoods.

328. Shall be punished with imprisonment for not more than four years, whoever, with the intent to procure an illegal profit for himself, or for a third person, to the prejudice of the insurer or of the legal holder of a recorded contract, sets fire to or causes an explosion in a thing insured against fire, or sinks or strands, destroys, renders unfit for use, or injures an insured vessel, or one the cargo or freight of which is insured, or on which a recorded loan has been effected.

341. The merchant who has been declared bankrupt or admitted to judicial assignment of the property shall be punished as guilty of fraudulent bankruptcy by an imprisonment of six years at most, if, in fraud, or to the injury of the rights of his creditors:

(1) He has invented or does invent charges against the estate, or has failed to represent or does not represent some of the assets, or has embezzled or does embezzle something belonging to the estate;

(2) He has conveyed anything away either gratuitously or for a consideration clearly below its value;

(3) He has given or does give, at the time of his failure, or

at a time when he knew the failure was inevitable, any advantage whatsoever to one of the creditors;

(4) He has not complied with or does not comply with the obligation imposed on him of retaining, preserving, and producing books and papers.

343. The manager or agent of a joint-stock company or co-operative association shall be punished with an imprisonment of six years at most, if, in fraud, or to the injury of the rights of the creditors of the company or association:

(1) He has invented or does invent charges against the same; he has failed to represent or does not represent assets, or he has embezzled or does embezzle any part of the property;

(2) He has conveyed anything away, either gratuitously or for a consideration, evidently below its value;

(3) He has given, or does give, at the time of its failure, or at a time when he knew that failure was inevitable, any advantage whatsoever to one of its creditors;

(4) He has not complied with, and does not comply with, the obligation imposed on him to retain, preserve, and produce books and papers.

344. Imprisonment of four years and six months at most shall be inflicted on any one who, in fraud and to the injury of the rights of creditors—

(1) In case of a merchant's judicial assignment of goods (forced bankruptcy) or failure, or in view of either, if in the last case the failure or assignment of goods followed, shall have embezzled any part of the estate;

(2) At the time of proving credits, in case of a judicial assignment of goods or failure, invents a credit which does not exist, or raises an existing credit.

352. Imprisonment for four years at most shall be inflicted on any one designedly or illegally destroying or rendering unfit for use a building or vessel belonging wholly or partly to another.

363. Imprisonment of four years at most shall be inflicted on a public officer—

(1) Who accepts a gift or promise, knowing that they are made to him for the purpose of binding him to do or not to do, in the exercise of his office, an act contrary to his duty;

(2) Who accepts a gift, knowing that it is made to him in consequence or by reason of his having done something or his having failed to do something in violation of his duty in the exercise of his office.

364. The judge who accepts a gift or promise, knowing that they are made to him to influence his decision on a case submitted for his judgment, shall be punished with imprisonment of nine years at most.

The judge who, in accepting the gift or promise, knows that they are made to obtain a condemnation in a penal case, shall be punished with imprisonment of twelve years at most.

366. The public officer who, in the exercise of his office, demands, receives, or retains, on the occasion of a payment, as due to himself, another officer, or any public office whatever, what he knows is not due, shall be punished, as guilty of malversation, with imprisonment of six years at most.

395. Imprisonment of two years at most shall be inflicted on any one being guilty of insubordination, who having taken passage on a Dutch vessel or fishing boat, shall commit an assault on the captain, or who, being one of the crew, assaults, while on board and in service, a superior officer, or who resists the latter with violence or with threats of violence, or who intentionally deprives him of his liberty of action.

The criminal shall be punished:

(1) With imprisonment of three years at most, if the offense or the assaults which accompanied it have occasioned bodily injury;

(2) With imprisonment of seven years and six months at most, if they have occasioned a grave bodily injury;

(3) With imprisonment of twelve years at most, if they have occasioned death.

396. Insubordination committed by two or more persons acting together shall be punished as mutiny, with imprisonment of six years at most.

The criminal shall be punished:

(1) With imprisonment of seven years and six months at most, if the offense committed by him, or the assaults accompanying it, have occasioned a bodily injury;

(2) With imprisonment of twelve years at most, if they have occasioned a grave bodily injury;

(3) With imprisonment of fifteen years at most, if they have occasioned death.

[Inclosure 3.—Translation.]

Draft of a treaty of extradition.

His Majesty the king of the Netherlands and.....

.....

having resolved by common accord to conclude a (new) convention for the extradition of criminals, have named for this purpose as their plenipotentiaries, to-wit:

His Majesty the king of the Netherlands: .....

.....

who, after having communicated to each other their full powers, found in good and due form, have agreed on the following articles:

ARTICLE I.

The government of the Netherlands and the government of ..... engage to mutually deliver to each other, in accordance with the rules stipulated in the following articles, persons, other than their own subjects, who have been convicted of, or charged with, one of the crimes hereinafter enumerated, committed outside of the territory of the state of which the extradition is requested:

1. (*a*) Attempt made against the life or liberty of the king, queen regnant, regent, or other head of a friendly state, or undertaken with a view to render them incapable of reigning; (*b*) attempt against the life or liberty of the queen non-regnant, of the heir presumptive of the throne, or of a member of the reigning family.

2. Murder or assassination; murder or assassination committed on a child;

3. Menaces made in writing and setting out the act to be performed under *duress per minas*, in so far as the laws of the two countries permit extradition on this ground;

4. Abortion procured by the pregnant woman or by others;

5. Violence which has caused a serious bodily injury or death, violence committed with premeditation, or serious violence;

6. Rape, attempt against chastity, the crime of having carnal intercourse outside of marriage with a girl or married woman under the age of sixteen years, or with a woman above that age,

when the guilty person knows that she is in a fainting or unconscious condition; acts of immorality, when the guilty person knows that the person with whom he commits them is in a fainting or unconscious condition, or when the said person has not reached the age of sixteen years; inciting a person under that age to commit or to submit to acts of immorality, or to have outside of the married state carnal intercourse with a third person;

7. Inciting minors to debauch, and every act intended to encourage the debauchery of minors punishable under the laws of the two countries;

8. Bigamy;

9. Kidnapping, suppression of the birth of a child, the substitution or changing of a child;

10. Kidnapping of minors;

11. Counterfeiting or altering coin or paper money, committed with the intention of issuing or causing to be issued the said coin or paper money as genuine and unaltered, or the intentional uttering of counterfeit or altered coin or paper money;

12. Counterfeiting or falsifying stamps and marks of the state, or of workmen's marks required by law, so far as the laws of the two countries permit extradition on this ground;

13. Forgery and the intentional utterance of what is forged or falsified, so far as the laws of the two countries permit extradition on this ground; having in possession or introducing from abroad notes of a bank of circulation chartered under the provisions of law, with the intention of uttering the same as genuine and not falsified, when the offender knew at the time of receiving them that they were counterfeit or falsified;

14. Perjury;

15. Bribery of public officers, so far as the laws of the two countries permit extradition on this ground; malversation in office, embezzlement committed by officers or by those regarded as such;

16. Intentional incendiarism when there may result from the same a general danger to property or a danger to the life of others; incendiarism caused with the intention of procuring for one's self or for a third person unlawful gain, to the injury of the insurer or of the lawful holder of a contract of marine insurance;

17. Unlawful destruction, caused intentionally, of an edifice belonging wholly or partly to another, or of an edifice or building, when there may result from the same a general danger to property or of a danger to the life of others;

18. Acts of violence committed publicly by mobs against person or property;

19. The unlawful act, committed intentionally, of sinking, wrecking, destroying, rendering unfit for use, or injuring a vessel when there may result from the same a danger for others;

20. Mutiny and insubordination of the passengers on board a vessel against the captain and of the crew against their superior officers;

21. The act, committed intentionally, of having endangered the safety of a train on a railroad;

22. Larceny;

23. Swindling;

24. Fraudulent use of a signature in blank;

25. Embezzlement;

26. Fraudulent bankruptcy.

The attempt to commit, and participation in, the offense are included in the preceding list, when they are punishable under the laws of the country from which the extradition is asked.

Article II.

Extradition shall not take place:

1. When the offense has been committed within a third country, and when the government of the said country demands the extradition;

2. When the request is made for the same offense for which the fugitive has been tried in the country from which the extradition is asked, and for which he has been condemned, discharged or acquitted;

3. If, according to the laws of the country from which the extradition is asked, prescription has run against the prosecution or the sentence before the arrest of the fugitive, or in case the arrest has not yet taken place before he has been summoned before the court for a hearing.

ARTICLE III.

Extradition shall not take place as long as the fugitive is under prosecution for the same offense in the country from which the extradition is asked.

ARTICLE IV.

If the fugitive is under prosecution or is serving his sentence for another offense than that which has given rise to the request for extradition, his extradition shall not be granted until after the conclusion of the prosecution in the country from which the extradition is asked and, in case of condemnation, until after he has served his sentence or has been pardoned. Nevertheless, if according to the laws of the country which asks the extradition, prescription of the prosecution might result from this delay, his extradition shall be granted, unless special considerations forbid it, under promise of the return of the extradited person as soon as the prosecution in the said country shall be concluded.

ARTICLE V.

It is expressly stipulated that the extradited person shall neither be prosecuted nor punished in the country to which the extradition has been granted for any punishable offense whatever not provided for by the present convention, and committed prior to his extradition, nor shall he be extradited to a third state without the consent of that granting the extradition, unless he has had the opportunity again to leave the country aforesaid during one month after he has been tried, and, in case of condemnation, after he has served his sentence or been pardoned.

Persons condemned for crimes to which, under the laws of the state making the demand, the death penalty is applicable, shall be extradited only on condition that the said penalty shall not be inflicted on them.

ARTICLE VI.

The provisions of the present treaty are not applicable to political offenses. The person extradited for one of the offenses against the universal law, mentioned in Article I, can, consequently, in no case be prosecuted and punished in the state to which the extradition is granted for a political offense committed

by him before extradition, nor for an act connected with such political offense.

ARTICLE VII.

Extradition shall be requested through the diplomatic channel, and shall be granted only on the production of the original, or of an authenticated copy either of the sentence of condemnation or bill of indictment or commitment for trial, together with the warrant of arrest, drawn according to the forms prescribed by the laws of the state making the request, and setting forth the offense in question with sufficient clearness to enable the state on which the demand is made to decide whether, under its laws, the case is one provided for by the present convention, and also indicating the penal provision applicable thereto.

ARTICLE VIII.

Articles seized in the possession of the fugitive shall be delivered to the state making the demand, if the competent authority of the state on which the demand is made has ordered their delivery.

ARTICLE IX.

Whilst awaiting the request for extradition through the diplomatic channel, the temporary arrest of the person whose extradition may be requested under the terms of the present convention, may be asked:

On the part of the Netherlands by any prosecuting officer (*officier de justice*) or any examining judge (*juge commissaire*);

On the part of.....

By .....

The temporary arrest is subject to the forms and regulations prescribed by the laws of the country on which the demand is made.

ARTICLE X.

The foreigner arrested temporarily under the terms of the preceding article, shall, unless his arrest is to be continued on another ground, be discharged, if, within the space of——— after the date of the warrant of provisional arrest, the request for extradition through the diplomatic channel, accompanied by the delivery of the papers designated by this convention, shall not have been made.

ARTICLE XI.

When, in the prosecution of a criminal case, one of the governments shall deem it necessary to examine witnesses in the other state, letters rogatory shall be transmitted for that purpose through the diplomatic channel, and due answer shall be made thereto, always complying with the laws of the country in which the witnesses are invited to appear. In case of urgency, however, letters rogatory may be directly addressed by the judicial authority in one of the states to the judicial authority in another state.

All letters rogatory intended to request an examination of witnesses shall be accompanied by a French translation.

ARTICLE XII.

If in a criminal case the personal appearance of a witness in the other country is necessary or desired, his government shall urge him to comply with the invitation addressed to him, and, in case of his consent, he shall receive traveling and hotel expenses in accordance with the rates and regulations in force in the country in which the examination is to take place, except in case the government making the request shall consider that the witness ought to be allowed a larger sum.

No witness, whatever be his nationality, who, having been summoned in one of the two countries, shall voluntarily appear before the judges of the other country, shall be prosecuted or detained there for prior criminal acts or sentences, nor under charge of complicity in the acts which are the grounds of the trial in which he is to appear as a witness.

ARTICLE XIII.

When in a criminal case the appearance of criminals held in the other state or the communication of proof of guilt or documents which are in the hands of the authorities of the other country shall be deemed useful or necessary, the request for the same shall be made through the diplomatic channel, and it shall be duly complied with, unless special considerations forbid it, under condition of returning the criminals and the proof.

ARTICLE XIV.

The transit through the territory of one of the contracting states, of a person surrendered by a third power to the other party and who does not belong to the country of transit, shall be granted on the simple production of the original or an authenticated copy of one of the legal documents mentioned in Article VII, provided that the crime which is the cause of the extradition is included in the present convention and does not fall under the provisions of Articles II and VI, and provided that the transfer takes place, so far as the escort is concerned, with the assistance of the officers of the country authorizing the transit over its territory.

The cost of transit shall be borne by the state making the request.

ARTICLE XV.

The respective governments mutually renounce all claim for the restitution of the expenses for maintenance, transport and other expenses which may be incurred, within the limits of their respective territories, in the extradition of prisoners who are charged with or convicted of crime, as well as those resulting from the execution of letters rogatory, from the transfer and return of criminals for appearance and from the transmission and return of evidence of guilt or of documents.

In case transfer by sea shall be deemed preferable, the person to be extradited shall be conducted to the port designated by the diplomatic or consular agent of the government making the demand, and he shall be embarked at its expense.

ARTICLE XVI.

The present convention shall take effect from the twentieth day after its promulgation according to the forms prescribed by the laws of the two countries.

From the date of its taking effect, the conventions of ..... shall cease to be in force and shall be replaced by the present convention, which shall continue in force until six months after notice to the contrary from one of the two governments.

It shall be ratified and the ratifications shall be exchanged within the period ....., or sooner if possible.

In faith whereof the respective plenipotentiaries have signed the present convention and have affixed thereto their seals.

Done in duplicate .....
at ....., on .....

[Inclosure 4.—Translation.]

Memorandum designed to serve as a reply to the questions contained in the circular of his excellency the Secretary of State, at Washington, of November 26, 1888.

1. The government of his majesty the king of the Netherlands can in no case grant extradition otherwise than by virtue of a special convention to this effect. This is owing to the provision contained in Article III, paragraph 2 of the constitution. No exception can be made to this rule under any circumstances, not even if reciprocity in this respect be offered by a foreign government. The extradition of our own subjects can never be granted.

2. A provisional arrest, pending an application for extradition, accompanied by the necessary judicial papers, may take place when provision therefor is made by a convention.

(Article IX of the law concerning extradition.)

According to this article, provisional arrests are made at the request of those foreign authorities designated as competent by the convention.

It is not necessary for this request to be made diplomatically, although it may be stipulated in the convention that it shall be so made. The period during which a person may be held under provisional arrest, pending the receipt of an application for extradition is determined by Article X of the law, and by the stipulations on this subject which are contained in the various extradition conventions.

When an application for extradition has been made, the person arrested is held until a decision has been reached concerning such application, while, if extradition is granted, the person arrested is, of course, held until the extradition takes place.

Provisional arrests may be made in compliance with a request sent by telegraph.

3. Warrants of arrest are issued by judicial magistrates (Article X) and, in the cases provided for in Article XII of the law, they are also issued, provisionally, by police magistrates.

A provisional arrest may be ordered by both judicial and police magistrates. (Article IX.)

A renewal of the warrant of arrest on the receipt of the application for extradition is not necessary.

The laws of the Netherlands recognize no complaint in extradition cases; no reply, therefore, need be made to the questions propounded on this subject.

4. The procedure to be observed in extradition cases is regulated by Articles XIII and XX of the law. The judge examines the person whose extradition is asked for, and gives his opinion. This opinion is addressed to the minister of justice, who, on his own authority, grants or refuses the extradition.

The documents on which the application for extradition is based, and the application itself, are transmitted diplomatically. (Article VIII.) By the subsequent transmission from the ministry of justice to the competent officer in the office of the attorney for the crown, the case is brought before the court.

Authentication of the documents is not required except when it is provided for by treaty, or when it is required by custom.

As has already been remarked (*sub numero 4*) the minister of justice decides whether an application for extradition is to be granted or denied. His decision is transmitted diplomatically.

7. The seizure of articles found in the possession of the person whose extradition is asked for may take place at the time of his arrest. (Articles IX and XII.) The court decides whether these articles are to be sent to the government applying for the extradition, that it may use them as evidence, or whether they are to be returned to the person whose extradition is asked for, even in case his extradition is granted. (Article VIII.)

8. The extradition takes place in a locality situated on the frontier, or in a sea-port, but not in the place where the person wanted is held.

The extradition can not take place before the expiration of fifteen days after the person wanted has been examined by the court. (Article XVIII.)

The law, however, fixes no period within which the extradition, when once granted, must take place.

9. The right of transit is regulated by treaty. According to Article XX of the law, all that is needed, in order that the

transit of a person wanted by a third power may be granted, is that such power shall have an extradition treaty with the Netherlands, and that the offense for which the extradition has been granted be mentioned in such treaty.

Transit through the territory of the Netherlands takes place, so far as the escort is concerned, with the co-operation of Dutch officers.

10. As to the expense growing out of extradition cases, the rule is that the government granting extradition defrays the expense of the keeping and transportation of the person wanted through its own territory; the expense of the transit is defrayed by the state that has applied for the extradition.

NICARAGUA.

Concluded June 25, 1870; Ratifications exchanged at Managua, June 24, 1871; Proclaimed September 19, 1871.

ARTICLE I.

The government of the United States and the government of Nicaragua mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up, who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes:

1. Murder, comprehending assassination, parricide, infanticide, and poisoning.

2. The crimes of rape, arson, piracy, and mutiny on board a

ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of a vessel.

3. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money, by violence, or putting him in fear.

4. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

5. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of all titles of instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administrations, and the utterance thereof.

6. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositaries.

7. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subjected to infamous punishment.

ARTICLE III.

The provisions of this treaty shall not apply to any crime or offense of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article, shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV.

If the person, whose surrender may be claimed pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offenses in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting

parties, or, in the event of the absence of these from the country or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Nicaragua, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant of his arrest in the country where the crime may have been committed, and of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The president of the United States, or the proper executive authority in Nicaragua, may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examining the question of extradition. If it should be decided that, according to law and evidence, the extradition is due pursuant to this treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI.

The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition shall have been made.

ARTICLE VII.

This convention shall continue in force during five (5) years from the day of exchange of ratifications; but if neither party shall have given to the other six (6) months previous notice of its intention to terminate the same, the convention shall remain in force five (5) years longer, and so on.

ORANGE FREE STATE.

Concluded December 22, 1871; Ratifications exchanged at Washington, August 18, 1873; Proclaimed August 23, 1873.

ARTICLE VIII.

The United States of America and the Orange Free State, on requisitions made in their name through the medium of their respective diplomatic or consular agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other.

Provided, That this shall be done only, when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the person so accused, shall be found.

ARTICLE IX.

Persons shall be delivered up according to the provisions of this convention, who shall be charged with any of the following crimes, to wit: Murder, (including assassination, parricide, infanticide, and poisoning;) attempt to commit murder, rape, forgery or the emission of forged papers, arson, robbery with violence, intimidation or forcible entry of an inhabited house, piracy; embezzlement by public officers, or by persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE X.

The surrender shall be made by the executive of the contracting parties respectively.

ARTICLE XI.

The expense of detention and delivery effected pursuant to the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XII.

The provisions of the aforegoing articles relating to the surrender of fugitive criminals, shall not apply to offenses committed before the date hereof, nor to those of a political character.

OTTOMAN PORTE.

Concluded August 11, 1874; Ratifications exchanged at Constantinople April 22, 1875; Proclaimed May 26, 1875.

ARTICLE I.

The government of the United States and the Ottoman government mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial, if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes:

1st. Murder, comprehending the crimes designated by the terms of parricide, assassination, poisoning, and infanticide.

2nd. The attempt to commit murder.

3rd. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4th. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money, by violence, or putting him in fear.

5th. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or government acts.

6th. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes and obligations and in general of all things being titles and instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administrations and the utterance thereof.

7th. The embezzlement of public moneys committed within the jurisdiction of either party, by public officers or depositaries.

8th. Embezzlement by any person or persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE III.

The provisions of this treaty shall not apply to any crime or offense of a political character, and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime, committed previously to that for which his or their surrender is asked.

ARTICLE IV.

If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offenses in the country where he has sought an asylum, or shall have been convicted thereof, his extradition may be deferred until he shall have been acquitted, or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from the country, or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal and an attestation of the official

character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of the Sublime Porte, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with a crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, or of the depositions upon which such warrant may have been issued, must accompany the requisition as aforesaid. The president of the United States or the proper executive authority in Turkey may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VI.

The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition has been made.

ARTICLE VII.

Neither of the contracting parties shall be bound to deliver up its own citizens under the stipulations of this treaty.

ARTICLE VIII.

This convention shall continue in force during five (5) years from the day of exchange of ratification, but if neither party shall have given to the other six (6) months' previous notice of its intention to terminate the same, the convention shall remain in force five years longer, and so on.

PRUSSIA AND OTHER STATES OF THE GERMANIC CONFEDERATION.

Concluded June 16, 1852; Ratifications exchanged at Washington, May 30, 1853; Proclaimed June 1, 1853.

ARTICLE I.

It is agreed that the United States and Prussia, and the other states of the Germanic Confederation included in or which may hereafter accede to this convention, shall upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, or the fabrication or circulation of counterfeit money, whether coin or paper money, or the embezzlement of public moneys committed within the jurisdiction of either party, shall seek an asylum, or shall be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made upon oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE II.

The stipulations of this convention shall be applied to any other state of the Germanic Confederation which may hereafter declare its accession thereto.

ARTICLE III.

None of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IV.

Whenever any person accused of any of the crimes enumerated in this convention shall have committed a new crime in the territories of the state where he has sought an asylum, or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried, and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

ARTICLE V.

The present convention shall continue in force until the 1st of January, 1858, and if neither party shall have given to the other six months' previous notice of its intention then to terminate the same, it shall further remain in force until the end of twelve months after either of the high contracting parties shall have given notice to the other of such intention; each of the high contracting parties reserving to itself the right of giving such notice to the other, at any time after the expiration of the said first day of January, 1858.

The original parties to this treaty were His Majesty the King of Prussia, in his own name, as well as in the name of His Majesty the King of Saxony, His Royal Highness the Elector of Hesse, His Royal Highness the Grand Duke of Hesse and on Rhine, His Royal Highness the Grand Duke of Saxe-Weimar-Eisenach, His Highness the Duke of Saxe-Meiningen, His Highness the Duke of Saxe-Altenburg, His Highness the Duke of Saxe-Coburg-Gotha, His Highness the Duke of Brunswick, His Highness the Duke of Anhalt-Dessau, His Highness the Duke of Anhalt-Bernburg, His Highness the Duke of Nassau, His Serene Highness the Prince of Schwarzburg-Rudolstadt, His Serene Highness the Prince of Schwarzburg-Sondershausen, Her Serene Highness the Princess and Regent of Waldeck, His Serene Highness the Prince of Reuss, elder branch, His Serene Highness the Prince of Reuss, junior branch, His Serene Highness the Prince of

Lippe, His Serene Highness the Landgrave of Hesse-Homburg, as well as the free city of Frankfort.

Since it was concluded the following have become parties to it: The city of Bremen, Mecklenburg-Schwerin, Mecklenburg-Strelitz, North German Confederation, Oldenburg, Schaumburg-Lippe, and Württemberg.

Memorial concerning the procedure on international extradition employed by the German Empire and Prussia.

In accordance with German views of justice the principle obtains that a subject of the empire who is in Germany may not be withdrawn from the jurisdiction of his German judge, and that when he has committed a crime or trespass in a foreign country he shall not, on that account, be delivered over to such country, but, the case being an appropriate one for such action, be prosecuted before the courts of his own country. This view of justice finds expression in the German penal code now in force, which provides in paragraph 4, No. 3, that a German may be prosecuted in Germany on account of every act which, under German law, is to be regarded as a crime or trespass committed abroad, punishable by the laws of the place where it was committed, and further directs, in paragraph 9, that a German shall not be delivered over to a foreign government for prosecution or punishment.

Apart from this provision of the penal code, which excludes the extradition of Germans, and from the provisions contained in extradition treaties which make extradition dependent on certain conditions, there exist for the German empire, and in particular for Prussia, no rules which limit extradition to a foreign country.

As regards the empire, no legal provisions whatever, other than the provision contained in paragraph 9, of the penal code, have been decreed. The treaties respecting the extradition of criminals concluded by His Majesty the emperor and assented to by the legislative factors, the Bundesrath and the Reichstag, have, however, the force of laws.

These are the extradition treaties of the empire with the following countries:

Italy, of October 31, 1871, (Imperial Law Gazette, 1871, p. 446.)

England, of May 14, 1872, (I. L. G., 1872, p. 229.)
Switzerland, of January 24, 1874, (I. L. G., 1874, p. 113.)
Belgium, of December 24, 1874, (I. L. G., 1875, p. 73.)
Luxemburg, of March 9, 1876, (I. L. G., 1876, p. 223.)
Brazil, of September 17, 1877, (I. L. G., 1878, p. 293.)
Sweden and Norway, of January 19, 1878, (I. L. G., 1878, p. 110.)
Spain, of May 2, 1878, (I. L. G., 1878, p. 213.)
Uruguay, of February 12, 1880, (I. L. G., 1883, p. 287.)
As also the articles having reference to extradition in the consular treaty with Servia, of January 6, 1883, (Art. XXV, I. L. G., p. 70), and in the amity and commercial treaty with the South African Republic, of January 22, 1885, (Art. 31, I. L. G., 1886, p. 228).

In so far as by the laws and treaties of the empire relating to the extradition of criminals, provisions which bind all the states of the union have not been made, those states are not hindered from independently regulating extradition by agreements with foreign states or by laws enacted for their own territory.

Of conventions, some of an earlier, some of a later period, for the extradition of criminals, entered into by individual states of the union with various foreign states, there exists a number, and in particular such with France, the Netherlands, Austria-Hungary, and Russia. With the United States of America, also, extradition is regulated by various treaties, as, besides the treaty of June 16, 1852, which applies to all of the states of the former North German Union, and also to Hesse, south of the Main, and to Württemberg, there exist separate treaties with Bavaria and Baden, of September 12, 1853, and January 30, 1857, respectively.

In detail the questions numbered 1 to 10, propounded in the communication of December 14th last, of the legation of the United States of America, are answered as follows:

1. Extradition is also accorded in Prussia and Alsace-Lorraine, as well as in the other states of the union, when no treaty requiring the same exists. This course is adopted from the point of view that it would not be in accordance either with the country's own interests or with the consideration due to friendly nations to permit persons who are prosecuted in foreign countries on account of vile penal acts to evade punishment by the appro-

priate foreign courts by obtaining shelter in this country. In accordance with this view, therefore, such persons are also without treaty obligation, or in extension of such, upon the request of the foreign government regularly extradited, in so far as particular objections to such course are not found to exist in individual cases. In connection with such procedure it is customary to require that by the submission of a warrant of arrest issued by the appropriate foreign court, or in some other suitable manner, it be shown on account of what acts the person in question is prosecuted, and that reciprocity on the part of the foreign state appears to be assured. What shall be deemed requisite in such cases as regards the matter itself depends upon the free determination of the government. The requirement of reciprocity could, however, not be dispensed with, since, with every disposition on the part of Germany to extend to foreign governments official co-operation in order to bring fugitive criminals to deserved punishment, it can, nevertheless, not be regarded as proper to accord to a foreign country an assistance in furthering the ends of justice which would not be extended in return by the latter under similar circumstances.

2. Pending the reception of a formal requisition for surrender, and of the documents to be submitted with the same, the provisional arrest and detention of a fugitive criminal can be granted. In so far as individual extradition treaties do not contain contrary provisions, the foreign government seeking extradition must, in order to secure provisional arrest and detention, make requisition therefor. For such proceedings the diplomatic channel, if no other means are provided, would constitute the rule. The requisition must regularly show on account of what punishable act the person in question is judicially prosecuted, and that in the country making the requisition a warrant of arrest has been issued against him.

To the extent in which greater requirements may in such cases be made by the particular foreign state, the same requirements would eventually be made of such state on the German side. Individual extradition treaties designate how long the fugitive may be provisionally held, and after what period he must be released in case the requisition accompanied by the documents necessary to support the same has not been made within such period.

This period is fixed by the treaties with Belgium and Luxemburg for the adjoining kingdom of Prussia, and as regards Luxemburg, also for the adjoining imperial territory of Alsace-Lorraine, at fifteen days, and for the remainder of the union at three weeks; pursuant to the treaties with Italy and Switzerland at twenty days; with Sweden and Norway at six weeks; with Spain at two months, and, as regards the foreign possessions of Spain at three months; with Brazil and Uruguay at ninety days.

In so far as such treaty provisions do not exist, the period is determined by the government in a particular case in accordance with the circumstances, and with consideration of the period accorded by the other state in such cases.

Provisional arrest and detention can be obtained on telegraphic information.

3. In the imperial extradition treaty with Belgium it is provided, in view of a legal requirement existing in that country, that provisional arrest shall take place upon a warrant issued by the examining judge (Untersuchungs-Richter) of the place of sojourn of the fugitive upon the basis of an official communication from the appropriate authority of the state making the requisition. A like provision is embodied in the extradition treaty with Luxemburg. Provisional arrest in Prussia takes place solely by direction of the administrative (police) authority—in the final resort, the minister of the interior. After the receipt of the formal requisition there is, as a rule, no necessity of a renewed warrant in support of a provisional arrest already decreed. A new one would, however, be necessary if the further detention devolved upon another authority than the one upon whom the provisional arrest devolved. In Prussia the arrest of a criminal whose extradition has been formally requested, as well as the provisional arrest, devolves in general upon the administrative (police) authority. A departure from this rule takes place only in so far as individual extradition treaties contain provisions not in accord therewith—as, for instance, the treaty with England. While, pursuant to that treaty, the person whose extradition is requested is to be primarily arrested by the appropriate authorities—therefore in Prussia by the police authorities—such person is thereupon to be conducted before the *judge* who is to examine the prisoner and provisionally investigate the penal case in the

same manner as if the arrest had been made on account of a punishable act committed in the home country (of the judge), so that the further detention depends upon the determination of the *judge*.

The case is similar with respect to the treaty of June 16, 1852, with the United States of America. These provisions have been adopted solely for the purpose of establishing a procedure having a reciprocal character with the state of law existing in England and the United States of America.

A complaint before the German court to obtain provisional arrest and detention, or arrest after demand of surrender, is not required in Germany, the principle being acted upon on the German side that extradition is conducted from government to government, and that therefore, after the requisition for surrender has been made by the government desiring extradition upon the government from whom it is desired, it rests with the latter to adopt, in accordance with its laws and institutions, further necessary measures. Therefore when a requisition for extradition or for provisional arrest has been made by a foreign government, instruction is given to the appropriate German authority to officially take or cause to be taken the measures appropriate to the purpose. In accordance therewith, in particular, the judicial measures requisite for arrest or detention are taken *ex officio* or the state attorney is directed to take them, without it being left to the foreign government and its official representatives to apply themselves like a private party to the German authorities or courts, and thus prosecute their claim to extradition, which rests on an international basis, like a private claim by means of a complaint before the authorities of the country. Only in the treaty with the United States of America is a "statement supported by oath" ("complaint made under oath") provided for, and in view of the procedure observed there, Germany must also meet requisitions of the United States with a similar requirement.

4. The requisition for extradition is regularly communicated to the ministers of the interior and of justice, and in connection with those authorities subjected to a provisional examination. If objections to according surrender are not found at this stage of the procedure, the matter is customarily turned over to the provincial authorities for closer investigation, and in such manner

that the administrative authority (the governmental president) and the state attorney having jurisdiction at the place where the arrest of the fugitive takes place are entrusted therewith. Upon the administrative authority devolves, in this connection in particular, the investigation of the relations which concern the person and nationality of the fugitive, while the question whether the punishable acts with which the fugitive is charged afford in their legal nature sufficient grounds for extradition is especially one for the examination of the state attorney. The courts participate in Prussia in this investigation only in so far as expressly provided for in the extradition treaties with foreign states, as in particular with England and the United States. This provision, however, as already indicated, has only been embodied in those treaties in consideration of the circumstances that in the foreign states in question a judicial procedure takes place in which evidence of the guilt of the fugitive must be submitted, which appears to render it proper that a like requirement should be made on the German side in case of requisitions by those states, and that the evidence submitted by them should be subjected to examination here also. In these cases it devolves upon the German courts to pass upon the sufficiency of the evidence submitted, in order that—in accordance with the laws of the state upon which the requisition is made—it may be shown either that the commitment of the fugitive for trial, in case the punishable act had been done in that state, would be justifiable, or that the fugitive is identical with the person condemned by the courts of the state making the requisition.

The judicial decision on these points, when reached, is communicated by the state attorney to the minister of justice, and is regarded by the executive as the utterance of the official authority upon which the decision of such questions devolves. The papers to be submitted to the court must be conveyed to the government through diplomatic mediation. Apart from the participation of the courts, which occurs only in connection with requisitions for extradition by England and the United States of America, these courts do not in Prussia occupy themselves with an examination of requisitions for extradition, for the reason that in examinations of requisitions made by other states than England and the United States of America, it is not a

question of the consideration of the evidence of the guilt of the fugitive. The question of guilt is, according to the view which obtains here, solely for the consideration of the foreign courts upon whom it devolves to adjudge the fugitive, while for this government it is only a question of determining whether the state attorney here should surrender the fugitive criminal to the appropriate foreign authorities, that is to say, whether in the foreign country a *penal* prosecution is pending for which such assistance in furthering the ends of justice should be accorded.

The examination of this question, which relates to the prosecution rather than to the trial (Aburtheilung), would seem to devolve with peculiar propriety upon the state attorney, he being the official upon whom the prosecution in all internal penal cases devolves.

5. The documents to be submitted as a basis for requisitions for extradition, pursuant to most of the imperial extradition treaties (such in particular as those with Belgium, Luxemburg, Sweden and Norway, Spain, and Uruguay), must be submitted in the original or in authenticated copies, and in such form as the laws of the state desiring the extradition prescribe.

With respect to individual states, such, for instance, as Austria-Hungary, Switzerland, and Luxemburg, partly on the basis of an agreement, partly on that of existing practice on both sides, a further authentication is not required when the documents submitted are made out with signature and official seal by the appropriate authorities of the state making the requisition, while in general it is required that the documents in question shall at the end be authenticated by the representative here of such state, in order that the authentication of the foreign office may be added before the documents are transmitted to other German authorities. The treaty with England requires authentication by a sworn witness, or by an impression of the seal of the minister of justice or other minister of state making the requisition. Since for the documents to be submitted to the United States of America as a basis for requisitions for extradition a particular certificate of authentication is prescribed therein which it is especially expressed that the documents in question are sufficient as evidence in Germany, it will be necessary to add to the documents submitted with an American requisition

for extradition a similar certificate of authentication in which it is certified in particular that such documents have been made out by the appropriate authorities of the United States, and that they are entitled to full credence there.

6. After the provincial authorities, or, as the case may be, the courts, have concluded the examination confided to them under Nos. 3 and 4, and have reported on the subject, the decision upon the requisition for extradition ensues at the central resort—in Prussia upon an understanding arrived at among the ministers for foreign affairs, of the interior, and of justice—and according to the circumstances of the particular case, after consideration of the matter by the royal Prussian government, or such other government of a state of the union as may be concerned, or the imperial stadtholder of Alsace-Lorraine, with the chancellor of the empire (or the foreign office). The decision reached is officially communicated by the foreign office to the representative, from whom the request has been received, of the state making the requisition.

7. All the articles found in possession of the person to be extradited at the time of his arrest are, as a rule, officially seized, and in case the appropriate authority of the state applied to for extradition has directed their delivery, are surrendered together with the prisoner. This procedure is employed, however, only in so far as reciprocity is assured.

Pursuant to the German extradition treaties this course has been regularly pursued with respect to the particular states, but not with respect to the United States of America. As the seizure and delivery of articles in the United States does not take place *ex officio*, it being left to the person sustaining damage to effect the surrender of the same by bringing action therefor before the American courts, it could not be reckoned on that on the German side in case of an American requisition for seizure and surrender of the articles found, such requisition would be *ex officio* complied with; the persons sustaining damage would, however, be at liberty to prosecute their claims by action before the German courts.

8. The fugitive whose extradition has been granted is delivered to the authorities of the state making the requisition at the frontier, and not at the place where he is detained. If the con-

veyance home of the criminal takes place by sea on a vessel [not] carrying the German flag, and a person has been sent by the state making the requisition to Germany to receive him, he is delivered to that person at the port of embarkation on board the vessel (not a German one) in question. If the voyage is to take place on a German vessel, the fugitive, for the reason that authority over a prisoner cannot be accorded to a foreign official on board a German vessel, in German waters or on the high sea, is not delivered over to such official until the territorial waters of the state making the requisition are reached.

As soon as extradition is granted the measures necessary to effect it are immediately taken. A particular period within which the fugitive must be taken in charge or removed from the country is not fixed either by law or by treaty.

9. The transit of a criminal surrendered by a third state is granted by the government of his majesty the emperor or by that of another state of the union under the same conditions as extradition. What the German attitude with respect to England and the United States of America would be in such cases, and whether in particular proofs of the guilt of the fugitive would be necessary, has not yet been considered. Germany would, it is to be presumed, upon assurance from England or America that, a case occurring, transit would not be made dependent upon the submission of such proofs, have no objection to permit the transit of a criminal to England or the United States in the same manner, without submission of proofs of guilt, upon the production only of a warrant of arrest issued by the English or American judge.

Transit through German territory takes place regularly with the accompaniment of a German police official.

10. As regards costs it is the rule for the empire, and all the states of the union, that a reimbursement of the costs arising from the arrest, the maintenance and transportation of the fugitive up to the time the frontier is reached, is not to be demanded of the state making the requisition, but that these costs are to be borne rather by the state upon which the requisition is made. This principle has been embodied in all extradition treaties as yet concluded by the empire, and is also regularly applied in extraditions which take place on the basis of reciprocity without

treaty obligations. Apart from an older agreement with Austria-Hungary made in the period of the confederated relation, only the treaties existing between Germany and the United States of America contain a provision pursuant to which the costs of the arrest and extradition are to be repaid by the government making the requisition. This provision, in connection with the large amount of the costs which arise in America, has resulted in compelling the German authorities in many cases to abstain from making requisition for the extradition of criminals who have found an asylum in the United States of America.

SALVADOR.

Concluded May 23, 1870; Ratifications exchanged at Washington, March 2, 1874; Proclaimed March 4, 1874.

ARTICLE I.

The government of the United States and the government of Salvador mutually agree to deliver up persons who, having been convicted of or charged with the crimes specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: *Provided*, That this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime had been there committed.

ARTICLE II.

Persons shall be delivered up who shall have been convicted of, or be charged, according to the provisions of this convention, with any of the following crimes:

1. Murder, comprehending the crimes designated in the penal codes of the contracting parties by the terms homicide, parricide, assassination, poisoning, and infanticide.

2. The attempt to commit murder.

3. The crimes of rape, arson, piracy, and mutiny on board a ship, whenever the crew, or part thereof, by fraud or violence against the commander, have taken possession of the vessel.

4. The crime of burglary, defined to be the action of breaking and entering by night into the house of another with the intent to commit felony; and the crime of robbery, defined to be the action of feloniously and forcibly taking from the person of another goods or money by violence, or putting him in fear.

5. The crime of forgery, by which is understood the utterance of forged papers, the counterfeiting of public, sovereign, or governmental acts.

6. The fabrication or circulation of counterfeit money, either coin or paper, of public bonds, bank-notes, and obligations, and in general of all things being titles or instruments of credit, the counterfeiting of seals, dies, stamps, and marks of state and public administration, and the utterance thereof.

7. The embezzlement of public moneys, committed within the jurisdiction of either party, by public officers or depositaries.

8. Embezzlement, by any person or persons, hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE III.

The provisions of this treaty shall not apply to any crime or offense of a political character; and the person or persons delivered up for the crimes enumerated in the preceding article shall in no case be tried for any ordinary crime committed previously to that for which his or their surrender is asked.

ARTICLE IV.

If the person whose surrender may be claimed, pursuant to the stipulations of the present treaty, shall have been arrested for the commission of offenses in the country where he has sought an asylum, or shall have been convicted therefor, his extradition may be deferred until he shall have been acquitted or have served the term of imprisonment to which he may have been sentenced.

ARTICLE V.

In no case and for no motive shall the high contracting parties be obliged to deliver up their own subjects. If, in conformity with the laws in force in the state to which the accused belongs, he ought to be submitted to criminal procedure for crimes com-

mitted in the other state, the latter must communicate the information and documents, send the implements or tools which were employed to perpetrate the crime, and procure every other explanation or evidence necessary to prosecute the case.

ARTICLE VI.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties, or in the event of the absence of these from the country, or its seat of government, they may be made by superior consular officers. If the person whose extradition may be asked for shall have been convicted of a crime, a copy of the sentence of the court in which he may have been convicted, authenticated under its seal, and an attestation of the official character of the judge by the proper executive authority, and of the latter by the minister or consul of the United States or of Salvador, respectively, shall accompany the requisition. When, however, the fugitive shall have been merely charged with crime, a duly authenticated copy of the warrant for his arrest in the country where the crime may have been committed, or the depositions upon which such warrant may have been issued, must accompany the requisition aforesaid. The president of the United States or the president of Salvador may then issue a warrant for the apprehension of the fugitive, in order that he may be brought before the proper judicial authority for examination. If it should then be decided that, according to law and the evidence, the extradition is due, pursuant to the treaty, the fugitive may be given up according to the forms prescribed in such cases.

ARTICLE VII.

The expenses of the arrest, detention, and transportation of the persons claimed shall be paid by the government in whose name the requisition shall have been made.

ARTICLE VIII.

This convention shall continue in force during (10) ten years from the day of exchange of ratifications; but if neither party shall have given to the other (6) six months' previous notice of its intention to terminate the same, the convention shall remain in force ten years longer, and so on.

SPAIN.

Concluded January 5, 1877; Ratifications exchanged at Washington, February 21, 1877; Proclaimed February 21, 1877.

ARTICLE I.

It is agreed that the government of the United States and the government of Spain shall, upon mutual requisition duly made as herein provided, deliver up to justice all persons who may be charged with, or who have been convicted of, any of the crimes specified in Article II of this convention, committed within the jurisdiction of one of the contracting parties, while said persons were actually within such jurisdiction when the crime was committed, and who shall seek an asylum or shall be found within the territories of the other: *Provided*, That such a surrender shall take place only upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.

ARTICLE II.

Persons shall be delivered up, according to the provisions of this convention, who shall have been charged with, or convicted of, any of the following crimes:

1. Murder, comprehending the crimes designated by the terms of parricide, assassination, poisoning or infanticide.
2. The attempt to commit murder.
3. Rape.
4. Arson.
5. Piracy or mutiny on board ship when the crew or others on board, or part thereof, have, by fraud or violence against the commander, taken possession of the vessel.
6. Burglary, defined to be the act of breaking and entering into the house of another in the night time with intent to commit a felony therein.
7. The act of breaking and entering the offices of the government and public authorities, or the offices of banks, banking houses, saving-banks, trust companies, insurance companies, with intent to commit a felony therein.

8. Robbery, defined to be the felonious and forcible taking from the person of another, goods or money by violence or by putting him in fear.

9. Forgery, or the utterance of forged papers.

10. The forgery or falsification of the official act of the government or public authority, including courts of justice, or the uttering or fraudulent use of any of the same.

11. The fabrication of counterfeit money, whether coin or paper, counterfeit titles or coupons of public debt, bank-notes or other instruments of public credit; of counterfeit seals, stamps, dies and marks of state or public administrations; and the utterance, circulation or fraudulent use of any of the above-mentioned objects.

12. The embezzlement of public funds, committed within the jurisdiction of one or the other party, by public officers or depositaries.

13. Embezzlement by any person or persons, hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

14. Kidnapping, defined to be the detention of a person or persons in order to exact money from them or for any other unlawful end.

ARTICLE III.

The provisions of this convention shall not import claim of extradition for any crime or offense of a political character, nor for facts connected with such crimes or offenses; and no person surrendered by or to either of the contracting parties in virtue of this convention, shall be tried or punished for any political crime or offense, nor for any act connected therewith, committed previously to the extradition.

ARTICLE IV.

No person shall be subject to extradition in virtue of this convention for any crime or offense committed previous to the exchange of the ratifications hereof; and no person shall be tried for any crime or offense other than that for which he was surrendered, unless such crime be one of those enumerated in Article II, and shall have been committed subsequent to the exchange of the ratifications hereof.

ARTICLE V.

A fugitive criminal shall not be surrendered under the provisions hereof when, from lapse of time or other lawful cause, according to the laws of the place within the jurisdiction of which the crime was committed, the criminal is exempt from prosecution or punishment for the offense for which the surrender is asked.

ARTICLE VI.

If a fugitive criminal, whose surrender may be claimed pursuant to the stipulations hereof, be actually under prosecution, out on bail or in custody, for a crime or offense committed in the country where he has sought asylum, or shall have been convicted thereof, his extradition may be deferred until such proceedings be determined and until such criminal shall have been set at liberty in due course of law.

ARTICLE VII.

If a fugitive criminal, claimed by one of the parties hereto shall be also claimed by one or more powers pursuant to treaty provisions on account of crimes committed within their jurisdiction, such criminal shall be delivered, in preference, in accordance with that demand which is the earliest in date.

ARTICLE VIII.

Neither of the contracting parties shall be bound to deliver up its own citizens or subjects under the stipulations of this convention.

ARTICLE IX.

The expenses of the arrest, detention, examination and transportation of the accused shall be paid by the government which has preferred the demand for extradition.

ARTICLE X.

Everything found in the possession of the fugitive criminal at the time of his arrest, which may be material as evidence in making proof of the crime, shall, so far as practicable, be delivered up with his person at the time of his surrender. Nevertheless, the rights of a third party, with regard to the articles aforesaid, shall be duly respected.

Article XI.

The stipulations of this convention shall be applicable to all foreign or colonial possessions of either of the two contracting parties.

Requisitions for the surrender of fugitives from justice shall be made by the respective diplomatic agents of the contracting parties. In the event of the absence of such agents from the country or its seat of government, or where extradition is sought from a colonial possession of one of the contracting parties, requisition may be made by superior consular officers.

It shall be competent for such representatives or such superior consular officers to ask and obtain a mandate or preliminary warrant of arrest for the person whose surrender is sought, whereupon the judges and magistrates of the two governments shall, respectively, have power and authority, upon complaint made under oath, to issue a warrant for the apprehension of the person charged, in order that he or she may be brought before such judge or magistrate, that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of the fugitive.

If the fugitive criminal shall have been convicted of the crime for which his surrender is asked, a copy of the sentence of the court before which such conviction took place, duly authenticated, shall be produced. If, however, the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such a warrant may have been issued, shall be produced, with such other evidence or proof as may be deemed competent in the case.

Article XII.

This convention shall continue in force from the day of the exchange of the ratifications thereof, but either party may at any time terminate the same on giving to the other six months' notice of its intention so to do.

CONVENTION FOR THE EXTRADITION OF CRIMINALS FUGITIVE FROM JUSTICE, BEING SUPPLEMENTAL TO THE CONVENTION OF JANUARY 5, 1877.

Concluded August 7, 1882; Ratifications exchanged at Washington April 19, 1883; Proclaimed April 19, 1883.

ARTICLE I.

Paragraph 5 of Article II of the aforesaid convention of January 5, 1877, is abrogated and the following substituted:

5. Crimes committed at sea:

(*a*) Piracy as commonly known and defined by the law of nations.

(*b*) Destruction or loss of a vessel caused intentionally, or conspiracy and attempt to bring about such destruction or loss, when committed by any person or persons on board of said vessel, on the high seas.

(*c*) Mutiny or conspiracy by two or more members of the crew or other persons on board of a vessel on the high seas, for the purpose of rebelling against the authority of the captain or commander of such vessel, or by fraud or violence taking possession of such vessel.

Paragraph 12 of said Article II is amended to read as follows:

12. The embezzlement or criminal malversation of public funds committed within the jurisdiction of one or the other party, by public officers or depositaries.

Paragraph 13 of said Article II is likewise modified to read as follows:

13. Embezzlement by any person or persons hired, salaried or employed, to the detriment of their employers or principals, when the crime or offense is punishable by imprisonment or other corporal punishment by the laws of both countries.

Paragraph 14 of said Article II is likewise modified to read as follows:

14. Kidnapping of said minors or adults, defined to be the abduction or detention of a person or persons, in order to exact money from them or from their families, or for any other unlawful end.

ARTICLE II.

In continuation of and as forming part of Article II, of the aforesaid convention of January 5, 1877, shall be added the following paragraphs:

15. Obtaining by threats of injury, or false devices, money, valuables or other personal property, and the purchase of the same with the knowledge that they have been so obtained, when the crimes or offenses are punishable by imprisonment or other corporal punishment by the laws of both countries.

16. Larceny, defined to be the theft of effects, personal property, or money, of the value of twenty-five dollars or more.

17. Slave-trade, according to the laws of each of the two countries respectively.

18. Complicity in any of the crimes or offenses enumerated in the convention of January 5, 1877, as well as in these additional articles, provided that the persons charged with such complicity be subject as accessories to imprisonment or other corporal punishment by the laws of both countries.

ARTICLE III.

After Article XI of the aforesaid convention of January 5, 1877, shall be inserted the two following articles:

Article XII.

If, when a person accused shall have been arrested in virtue of the mandate or preliminary warrants of arrest, issued by the competent authority as provided in Article XI, hereof, and been brought before a judge or magistrate to the end of the evidence of his or her guilt being heard and examined as hereinbefore provided, it shall appear that the mandate or preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegraph from the government asking for the extradition, it shall be competent for the judge or magistrate at his discretion to hold the accused for a period not exceeding twenty-five days, so that the demanding government may have opportunity to lay before such judge or magistrate legal evidence of the guilt of the accused; and if, at the expiration of said period of twenty-five days, such legal evidence shall not have been produced before such judge or magistrate, the person arrested shall

be released; provided that the examination of the charges preferred against such accused person shall not be actually going on.

Article XIII.

In every case of a request made by either of the two contracting parties for the arrest, detention or extradition of fugitive criminals in pursuance of the convention of January 5, 1877, and of these additional articles, the legal officers or fiscal ministry of the country where the proceedings of extradition are had, shall assist the officers of the government demanding the extradition, before the respective judges and magistrates, by every legal means within their or its power; and no claim whatever for compensation for any of the services so rendered shall be made against the government demanding the extradition; provided, however, that any officer or officers of the surrendering government, so giving assistance, who shall, in the usual course of their duty, receive no salary or compensation other than specific fees for services performed, shall be entitled to receive from the government demanding the extradition, the customary fees for the acts or services performed by them, in the same manner and to the same amount as though such acts or services had been performed in ordinary criminal proceedings under the laws of the country of which they are officers.

ARTICLE IV.

All the provisions of the aforesaid convention of the 5th of January, 1877, not abrogated by these additional articles, shall apply to these articles with the same force as to the said original convention.

SWEDEN AND NORWAY.

Concluded March 21, 1860; Ratifications exchanged at Washington December 20, 1860; Proclaimed December 21, 1860.

ARTICLE I.

It is agreed that the high contracting parties shall, upon mutual requisitions by them, their diplomatic or consular agents, respectively made, deliver up to justice all persons who, being

charged with or condemned for any of the crimes enumerated in the following article, committed within the jurisdiction of either party, shall seek an asylum or shall be found within the territories of the other: *Provided*, That this surrender and delivery shall not be obligatory on either of the high contracting parties except upon presentation by the other, in original or in verified copy, of the judicial declaration or sentence establishing the culpability of the fugitive, and issued by the proper authority of the government who claims the surrender, in case such sentence or declaration shall have been pronounced; said document to be drawn up and certified according to the forms prescribed by the laws of the country making the demand. But if such sentence or declaration shall not have been pronounced, then the surrender may be demanded, and shall be made, when the demanding party shall have furnished such proof of culpability as would have been sufficient to justify the apprehension and commitment for trial of the accused if the offense had been committed in the country where he shall have taken refuge.

ARTICLE II.

Persons shall be delivered up who shall have been charged with or sentenced for any of the following crimes, to wit: Murder (including assassination, parricide, infanticide, and poisoning), or attempt to commit murder; rape; piracy (including mutiny on board a ship, whenever the crew or part thereof, by fraud or violence against the commander, have taken possession of the vessel); arson; robbery and burglary; forgery and the fabrication or circulation of counterfeit money, whether coin or paper money; embezzlement by public officers, including appropriation of public funds.

ARTICLE III.

The expenses of any detention and delivery, effected in virtue of the preceding provisions, shall be borne and defrayed by the party who makes the requisition and receives the fugitive.

ARTICLE IV.

Neither of the contracting parties shall be bound to deliver up, under the stipulations of this convention, any person who, according to the laws of the country where he shall be found,

is a citizen or a subject of the same at the time his surrender is demanded.

ARTICLE V.

The provisions of the present convention shall not be applied to any crime or offense of a political character.

ARTICLE VI.

Whenever any person, accused of any of the crimes enumerated in this convention, shall have committed a new crime in the territories of the state where he has sought an asylum or shall be found, such person shall not be delivered up under the stipulations of this convention until he shall have been tried and shall have received the punishment due to such new crime, or shall have been acquitted thereof.

SWITZERLAND.

Concluded November 25, 1850; Ratifications exchanged at Washington November 8, 1855; Proclaimed November 9, 1855.

ARTICLE XIII.

The United States of America and the Swiss Confederation, on requisitions made in their name through the medium of their respective diplomatic or consular agents, shall deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial if the crime had been committed in the country where the person so accused shall be found.

ARTICLE XIV.

Persons shall be delivered up, according to the provisions of this convention, who shall be charged with any of the following crimes, to wit:

Murder (including assassination, parricide, infanticide, and poisoning); attempt to commit murder; rape; forgery, or the emission of forged papers; arson; robbery with violence, intimidation, or forcible entry of an inhabited house; piracy; embezzlement by public officers, or by persons hired or salaried to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XV.

On the part of the United States, this surrender shall be made only by the authority of the executive thereof; and on the part of the Swiss Confederation, by that of the federal council.

ARTICLE XVI.

The expenses of detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XVII.

The provisions of the foregoing articles relating to the surrender of fugitive criminals shall not apply to offenses committed before the date hereof, nor to those of a political character.

SWITZERLAND.

The following is taken from a discussion of extradition procedure in Switzerland (13 Revue de droit int. et de lég. comp., 1881, pp. 49–51), by M. Alfred Martin, an advocate of Geneva.

Demands for arrests are addressed to the executive authority. In some of the treaties it is provided that such demands may be directly made to a judicial or administrative authority of one of the two states.

When a demand for arrest is received, the federal council asks the government of the canton where the fugitive resides to arrest him.

The individual who has been provisionally arrested has the right to contest the demand for extradition. If he pretends that the demand is contrary to the existing treaty between Switzerland and the demanding country, the matter is submitted to the examination and decision of the judicial power. If the

fugitive does not contest the application of the treaty, the executive orders and carries out the extradition. But if he brings the matter before the federal tribunal, its decision is final. The federal council is deprived of its control over the affair.

By a judgment of the federal tribunal of March 22, 1879 (arrêt Massit), it was decided that treaties of extradition are like laws of procedure, and that in general they apply upon their promulgation to all prior acts.

It is an acknowledged principle that extradition can only take place for an act committed outside of the territory of the state on which the requisition is made. The federal court referred to this elementary rule in a very recent decision relative to a requisition from France with regard to an act which had been committed on Swiss territory. Of course the extradition was refused.

It is also indisputable that an act, in order to give rise to extradition, must have a penalty attached to it by the law of the country on which the requisition is made. The federal court made application of this principle in a very interesting case. It consisted in a demand for extradition made by Germany for embezzlement. The accused had taken refuge in the canton of St. Gall. Now, according to the law of that canton, a prosecution can be instituted for that act only on the complaint of the person wronged, and the criminal proceedings had been instituted officially. For this reason the extradition was refused.

Still it is not necessary that the act charged be designated in the same way in the two codes; it is sufficient that the act be considered a crime or an offense by the two codes.

The multiplicity and variety of the laws of the cantons sometimes renders the application of the international conventions a little difficult. Take, for instance, an act which is punishable in almost all the republics composing the confederation, but which is not mentioned in the code of the canton in which the fugitive is. Can it be said that the act is not punishable in Switzerland? Must the extradition be refused? The federal court has admitted that Switzerland may grant the extradition of a person for acts which are punished by the code of Germany on the one hand, and by a certain number of Swiss codes on the other, when Germany makes the requisition, provided that the

repression of such acts is in conformity with the general interests.

It should be observed that the court, in this decision, bases its action on the fact that the treaty with Germany does not require that the act with which the accused is charged be punishable under the codes of both countries. The decision would probably be different if the application of another treaty was concerned.

Persons surrendered to the country making the requisition can not be tried for any act except that for which the extradition was granted. Application was made of this rule in the case of two persons surrendered to Switzerland, one by Holland, the other by England, as charged with a certain offense. They are demanded from Switzerland by the Grand Duchy of Baden as being guilty of another offense. The extradition is refused as long as Holland and England withhold their consent.

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